(30,371)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 412

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES OF AMERICA, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES OF AMERICA

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia.

No. 4164

COMPAGNIE INTERNATIONALE D. PRODUITS ALIMENTAIRES S. A., Appellant,

vs.

THOMAS W. MILLER, &c., et al.

a Supreme Court of the District of Columbia.

In Equity.

No. 42058.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Complainant,

against

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill.*

Filed December 27, 1923.

In the Supreme Court of the District of Columbia, Holding an Equity Term.

In Equity.

No. 42058.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Complainant,

against

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, Defendants.

To the Supreme Court of the District of Columbia:

The Complainant respectfully represents that:

First. It is a corporation organized on September 16, 1913 and existing under and by virtue of the laws of the Confederation of Switzerland, and has its principal office and place of business in Schaffhausen, in the Canton of Schaffhausen, Switzerland, and has no office, place of business or agent within the United States of America.

Second. The defendant Thomas W. Miller is a resident of the District of Columbia, and is now and since about March, 1921 has been the duly appointed, qualified and acting Alien Property Custodian of the United States, and is sued herein as the incumbent of said office; the said defendant is the successors in said office of Francis P. Garvan who in turn was the successor in said office of A. Mitchell Palmer, the first incumbent, and said defendant as such officer is possessed of the rights, property and interest owned or held
2 by and is subject to the obligations, duties and liabilities imposed upon his predecessor in said office.

Third: The defendant Frank White is a resident of the District of Columbia, and is now and since about April, 1921 has been the duly appointed, qualified and acting Treasurer of the United States, and is sued herein as the incumbent of said office.

Fourth. This is a suit of a civil nature, brought under the laws of the United States of America and in conformity with the general jurisdiction and powers of this court. The jurisdiction of this court is invoked under Section 24 of the Federal Judicial Code; also under the Act approved by the President on October 6th, 1917 known as the "Trading with the Enemy Act", and the acts amendatory thereto and the Executive orders and actions proclaimed and done in alleged conformity therewith; also under the Con-

stitution of the United States of America and, more particularly, the Fourth and Fifth Amendments thereto; also under the provisions of the Treaty existing between the Confederation of Switzerland and the United States of America, concluded November 25th, 1850 and ratified on the 7th day of March, 1851, and particularly under Art. I thereof. This action is commenced within the period prescribed by the said Acts of Congress for the bringing of such actions.

Fifth. The complainant is not now, and never has been an enemy or ally of enemy as defined in said Acts of Congress, and it has never been proclaimed by the President as included within said terms, or either of them; no finding that it is an enemy or ally of enemy
3 has been made either by the President as aforesaid, or by the Alien Property Custodian, or by any other authority of the United States of America whatsoever. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation which now is or at any time since April 6, 1917, was an ally of any nation with which the United States now is or at any time since said date was at war.

Sixth. Prior to November 2nd, 1912 a certain firm or copartnership called Heinr. Franck Söhne, having its principal office at Ludwigsburg, Germany, did business in the State of New York in the manufacture and sale of chicory. The said firm was well-known, had been in existence for over 75 years and had had relations with the United States for over 50 years. It had done business in the State of New York since 1895, and was composed of Carl and Walter Franck, of Linz, Austria, and Richard and Robert Franck, of Ludwigsburg, Germany, and Eugene Beitter, a resident of the State of New York who was then a German subject but since has become a citizen of the United States. On November 12, 1912, the business of the copartnership was incorporated under the laws of the State of New York, and a corporation formed under the name of Heinr. Franck Sons, Inc. The stock of this corporation was issued
4 to the former copartnership and to their nominees, of whom at least three were American citizens. The capitalization was $500,000; the corporation was the owner of all the stock, with the exception of 10 shares, of the New York corporation of Georg. Jos. Scheuer, Inc., which corporation was engaged in business similar to that of Heinr. Franck Sons Inc. In 1913 the latter corporation acquired all the stock of the Franck Chicory Co., a Michigan corporation which was engaged in similar business, excepting only 4 shares. Thereafter, and on or about October 3rd, 1913, the authorized capital of Heinr. Franck Sons, Inc. was increased from $500,000 to $700,000. and the stock representing such increase was issued to the foregoing persons. Thereupon, Eugene Beitter became the owner of 750 shares of the par value of $100. each, and the former partners and their nominees became the owners of the balance, i. e. 6,250 shares of the par value of $100. each.

Seventh. For many years prior to 1912 a business had been conducted in Europe similar to that of Heinr Franck Söhne, and known as Kathreiner's. A bitter trade rivalry grew up between the two firms and continued until 1912. In 1909 the said firm of Kathreiner's and Heinr Franck Söhne signed an instrument known as a Treaty of Peace. The terms of this were violated according to the Kathreiner group by the Franck interests, and the firm thereupon began a suit in equity against the latter in the courts of the then Empire of Germany; that suit was compromised by the making of a new agreement dated June 27th, 1912. That agreement failed to preserve the peace and a new agreement was made and entered
5 into on the 27th day of September, 1913, providing for the transfer to a Swiss corporation of the interests in their several enterprises wherever situated, of all the warring parties, at prices fixed by the agreement itself and to be paid in stock of the Swiss corporation. The corporation thus incorporated is the complainant; its date of incorporation is September 16, 1913; the place is Schaffhausen, a Canton of the Confederation of Switzerland. The capitalization was Five million Francs and of this amount one-quarter or Frs. 1,250,000 was, immediately after the incorporation, trusteed for the benefit of the interests theretofore hostile to the Francks, known as the Kathreiner group. The remaining three-quarters of the capital stock was apportioned to the Franck interests. The agreement of September 27, 1913, provided for the increase of the capital stock to Frs. 60,000,000 before the several enterprises belonging to the several groups had been transferred to your complainant, and valued by it, and said agreement likewise provided for a bond issue of Frs. 30,000,000. Thereafter, and in March 1915, the various enterprises having meanwhile been conveyed to your complainant, its capital stock was increased to Frs. 60,000,000—and distributed in the manner aforesaid, i. e. one-quarter to the Kathreiner interests and three-quarters to the Franck interests, and a bond issue of Frs. 30,000,000—was authorized and issued, a portion of which was used to purchase certain other enterprises necessary to the business of the complainant; another portion was sold in the bond market of Switzerland to any person who desired to buy same.

6 Eighth. Among the assets of the Franck group, which it was required according to the agreement of September 27th, 1913 to transfer to the complainant, was all the right, title and interest of that group in the New York corporation of Heinr. Franck Sons, Inc., aforesaid; and in accordance with their obligations said Franck interests transferred unto the complainant at some time before the 14th day of July, 1914 and as of July 1st, 1913 and at a valuation of Frs. 2,500,000—the 6,250 shares of the capital stock of the New York corporation which had been held by them since its incorporation on November 12, 1912. Said shares of stock were transferred on the books of Heinr. Franck Sons, Inc. as follows: 6,248 shares unto the name of your complainant; 2 shares unto the names of individuals to enable them to qualify as directors of the

American corporation. Since the said transfer of the 6,250 shares of stock, aforesaid, no person or corporation, other than your complainaint has had any interest in said stock whatsoever; the certificate has been in its possession or under its control at all times since it was issued, and is in its possession and under its control at the present time. The incorporation of your complainant was in strict compliance with the law of Switzerland; its corporate acts were each registered there, as required by law, and constitute public records at the present time; the incorporation was fully completed and all capital contributions arranged before the outbreak of the European war on July 29, 1914 and was made of course, without any knowledge of or reference to the political conditions which subsequently arose.

7 Ninth. On the 1st day of July 1918, the proportion of the total capital stock of your complainant, belonging to or standing in the name of Carl, Richard, Robert and Walter Franck or either of them, was 55.19%; the proportion of the total capital stock of your complainant, at that time belonging to and standing in the name of persons who were not enemies or allies of enemies, was 17.15%; at present the total capital stock of your complainant is owned by persons of the following nationalities: Swiss: 38.40%; Italian: 3.17%; English: 12.50%; Austrian: 14.64%; German: 26.26%; Dutch: 0.88%; Unknown: 4.14%. On the 1st day of July 1918, the bonds of the corporation were owned by persons of the following nationalities: Swiss, or neutrals and allies: 49-1/10%; Austrian: 21-1/10%; German: 25-4/10%; Persons unknown: 4-4/10%; and at present the situation is the following: Swiss, 59.50%; Austrian, 22%; German, 5%; Unknown, 12.73%.

Tenth. By demand dated the 1st day of July, 1918, a copy of which is hereunto annexed and marked Exhibit A, and addressed to Heinr. Franck Sons, Inc., Flushing, New York, the then Alien Property Custodian of the United States, A. Mitchell Palmer, did determine that Carl, Richard, Robert and Walter Franck were enemies not holding a license granted by the President, and had a certain right, title and interest in and to 6,249 shares of the stock of Heinr. Franck Sons, Inc.; 6,248 shares standing in the name of your complainant and one share in the name of T. Ellett Hodgskin, and said Alien Property Custodian did require the conveyance from said corporation to himself of every right, title and interest

8 of said enemies in said stock. By demand dated July 1st, 1918, a copy of which is hereunto annexed and marked Exhibit B, said A. Mitchell Palmer determined that Richard Franck, whose address is Ludwigsburg, was an enemy not holding a license granted by the President; that he had similar rights in one share of the said stock, and said Alien Property Custodian required that every right, title and interest of said enemy in said stock be conveyed to him. By supplementary demand, dated March 25, 1919, copy of which is hereunto annexed and marked Exhibit C, Francis P. Garvan who had meanwhile become Alien Property Custodian, determined that the shares aforesaid belonged to and were held for,

on account of, on behalf of or for the benefit of the persons mentioned in Column 4 thereof, i. e. Carl, Robert, Richard and Walter Franck, aforesaid; that these persons were enemies not holding a license granted by the President and he thereby seized such shares of stock and required that the same be transferred to him. By supplementary demand, dated April 28, 1919, said Francis P. Garvan made similar findings regarding the four Francks mentioned above, and determined that certain trade-marks and trade-mark registrations therein specified, and the good-will and business pertaining to said trade-marks, belonged to or were held for or on account of, or on behalf of, or for the benefit of said enemies comprising the firm of Heinr Franck Söhne, of Ludwigsburg, Germany, and seized the said trade-marks and the certificates of registration thereof, and the good-will and business thereunto pertaining and required them to be conveyed to him. Said stock, and the said trade-marks,
9 registrations, business and good-will were thereupon conveyed and delivered to the Alien Property Custodian as required by law, and was sold by him together with the patents and trade-marks held by the corporation unto one David McMorran. There were likewise seized by the*h* then Alien Property Custodian certain dividends due but unpaid upon said stock, or which thereafter were declared thereon. On information and belief, that the proceeds of the sale and the dividends collected on the stock aforesaid before the sale, amounted to upwards of $540,000 and are now in the hands of the defendant Frank White as Treasurer of the United States.

Eleventh. That thereafter and in pursuance of the terms of Section 9 of the Act known as "Trading with the Enemy" this complainant filed claims for the said amounts with the Alien Property Custodian, alleging that the said property belonged to it, a Swiss corporation, and not to the said Carl, Robert, Richard and Walter Franck. That after hearings had, the Alien Property Custodian submitted the claims without recommendation to the Attorney General of the United States; that the Attorney General rendered an opinion disallowing the said claims, and that on or about the 13th day of December, 1922, the President of the United States of America denied the said application for a refund of the said money.

Twelfth. At all the times hereinbefore mentioned, and from September 16, 1913 on which date it was incorporated, until the present time, your complainant has functioned and continues to function as a *bona fide* Swiss corporation. During the year 1919
10 financial conditions in Europe, and particularly the condition of the exchange between countries there, and between those countries and the United States of America, became progressively worse so that on December 31, 1919, your complainant was compelled to write off the amount of Swiss Frs. 56,232,098.75 from its total capitalization and surplus of Swiss Frs. 69,885,933.49, which said amount had been lost by it in operating its business. Subsequently, the corporation was compelled to write off further large sums by reason of which its capital was, and continues to be,

very seriously impaired. The remaining property of the corporation, including the amount received from the sale of its stock in Heinr. Franck Sons, Inc., the New York corporation, constitutes a fund, for the benefit of its creditors, of which there are a considerable number and amount, and for the benefit of the holders of the bonds aforementioned, in such manner that the stockholders of your complainant are not entitled to receive, and will not receive, any portion of the assets of this corporation, including the fund the subject of this action.

Thirteenth. Complainant charges that said taking over and seizure of its said property and assets, and the conveyance, transfer, assignment, delivery and payment thereof to the Alien Property Custodian, were illegal, wrongful and void in that the complainant was not an enemy or ally of enemy whose property or assets could be lawfully taken over or seized by, or conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian within the true meaning and intent of said terms in said Acts of Congress; on the contrary, the complainant in good faith had purchased within
11 the United States of America under and by virtue of the protection of the Treaty between the United States of America and Switzerland, aforesaid, and was engaged, as a neutral corporation, in holding the stock of Heinr. Franck Sons, Inc. the New York corporation, at the time of the said seizure; that the stock seized, as aforesaid, did not, at any time after the transfer thereof to your complainant, belong to, nor was same held for, on account of, on behalf of, or for the benefit of any enemy or ally of enemy of the United States of America.

Fourteenth. That no due and legal determination was ever made under the said "Trading with the Enemy" Act or otherwise that the said property and assets were enemy property and assets, and that no demand whatsoever of any kind, for said property and assets as required by law was ever made or served upon the complainant, nor upon the bondholders, or any person representing them, nor was any notice of the proposed action of the said Alien Property Custodian ever served upon any of these persons.

Wherefore, the complainant prays that a writ of subpœna issue herein directed to the said defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States of America, commanding them and each of them to appear herein and answer this bill of complaint, but not under oath, the answer under oath of each of them being hereby specifically waived, and that said defendants and each of them be directed (1) to deliver to complainant all of said property and assets seized,
12 taken over, conveyed, transferred, assigned, delivered or paid to the then Alien Property Custodian or the defendant Alien Property Custodian or the defendant Treasurer of the United States, as aforesaid, and now in the possession, custody or control of the above named defendants or either of them; (2) to pay over to the complainant the proceeds and avails of the sale or other disposition of any or all of said property and assets, together with all interest

or income accrued or realized thereon; and (3) to account to complainant for said property and assets, interest and income, and (4) that the complainant have such other and further relief as to the court may seem just and proper.

COMPAGNIE INTERNATIONALE DE
PRODUITS ALIMENTAIRES S. A.,
By FRITZ BON,
Director.

ELLIS, HARRISON, FERGUSON & ELLIS,
HENRY ESCHER,
Attorneys for Plaintiff.

CONFEDERATION OF SWITZERLAND,
Canton of Zurich,
City of Zurich, ss:

Consulate of the United States of America at the City of Zurich.

I, Fritz Bon being duly sworn says:

My address is Rueschlikon, Canton Zurich, Switzerland; I am a Director of Compagnie Internationale de Produits Alimentaires S. A., the complainant in the above entitled action; I have read the foregoing bill of complaint and know the contents thereof,
13 and the same is true to the best of my knowledge, information and belief.

The reason why this verification is not made by the complainant is that it is a corporation, and that deponent as a Director thereof is familiar with all the facts and circumstances set forth in the above bill of complaint.

The sources of deponent's information and the grounds of his belief are personal knowledge of the facts and examination of the corporation's records and other papers.

FRITZ BON.

Sworn to before me this 5th day of December, 1923.
[SEAL.]
CHARLES W. ALLEN,
Vice Consul of the United States of America, Zurich, Switzerland.

Service No. 5183.
Gratis.

14

EXHIBIT "A."

A. P. C. Form No. 106-A.

Original.

Report No. 24031. Trust No. W-21963-M.

Demand on Corporation for Stockholder's Interest Without Presentation of Certificates.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (*e*). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (*e*). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

Sec. 1 (*c*). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or

would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (*a*). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (*c*). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regualtions heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Sec. 3 (*d*). "The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to, and over corporate stock, shares, or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company, or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares, or certificates, (2) the right to exercise all voting power appertaining to such stock, shares, or certificates, and (3) the right to receive all subscription rights, dividends, and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares, or certificates, regardless of whether or not such stock, shares, or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares, or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company, or trustee issuing the same."

To Heinr. Franck Sons, Inc.,

Address: Flushing, New York:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders, after investigation do determine that: Carl, Robert, Richard and Walter Franck (name of enemy or ally of enemy) whose address

is Ludwigsburg (last known address) are enemies (not holding a license granted by the President), and has a certain right, title, and interest in and to 6249 shares of (not classified) stock standing on your books in the name of T. Ellet Hofgskin (#20 for 6249 shs. & #22 for one share) Cert. #20 n/o Internationale Nahrungs & Genussmettel, A. G. and Cert. 22 n/o.

I, as Alien Property Custodian, do hereby require that you shall convey, transfer, assign, and deliver to me as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, every right, title, and interest of the said enemies in said stock, including in respect to the said stock the right which the said enemies may have, (*a*) to receive all notices issued by you to the holders or owners of similar stock, shares, or certificates; (*b*) to exercise all voting power appertaining to such stock, shares, or certificates; (*c*) to receive all subscription rights, dividends, and other distributions and payments, whether of capital or of income, declared or made on account of such stock, shares, or certificates.

I, as Alien Property Custodian, do hereby further require that you note the substance of this demand upon your stock books and/or stock ledger, and that you furnish a copy of this demand to the registrar and/or transfer agent, if any, of the stock in respect to which this demand is made.

I, as Alien Property Custodian, do hereby further require that within ten days from the service of this demand upon you, you report to me any and all acts which you have done, or omitted to do, pursuant to the requirements of this demand.

Until otherwise directed, you will remit to the Alien Property Custodian at Washington, by check payable to his order, all payments, whether of capital or income, now or hereafter declared or due on account of such stock, shares, or certificates, and you will direct such notices in respect to the said stock, shares, or certificates to the Alien Property Custodian.

This demand is supplementary to any demand which may hitherto have been made upon you, accompanied by the presentation of certificates which represent shares or beneficial interests, for the transfer into my name, as Alien Property Custodian, of such certificates, or for the transfer thereof into the name of any nominee of me as Alien Property Custodian, and this demand shall not prejudice or affect any demand accompanied by such certificates which has been, or which may hereafter be, made.

Witness my hand and seal of office, this First day of July, 1918.

A. MITCHELL PALMER,
Alien Property Custodian.

By J. L. DAVIS,
Managing Director.

(Signed)

You are hereby instructed to remit all accumulated dividends direct to this office upon receipt hereof. If checks for accumulated dividends have heretofore been drawn in favor of the enemy and are now held by you, you may send such checks direct to this office.

All future dividends shall be remitted to Empire Trust Company as Depositary for Alien Property Custodian. Trust No.W-21963-M, which has been duly designated as depositary of this trust.

You will also direct all notices hereby demanded, to said depositary and identify each notice by the trust number hereof.

15 Service of the within demand accepted this 17th day of July, 1918.

HEINR. FRANCK SONS, INC.,
By EUGENE BEITTER,
Secretary.

Served the within notice and demand on the within-named Heinr. Franck Sons, Inc. at Flushing *in the City of New York,* State of New York, this 17th day of July, 1918, by giving a true and correct copy thereof to Eugene Beitter, a secretary of the corporation of whom said demand is made, at the office of said corporation.

EMPIRE TRUST COMPANY,
(Signature Illegible.)

Served the within demand and notice on the corporation to which this demand is addressed, by transmitting a true and correct copy thereof to the said corporation at the address which appears on the face hereof, in a securely fastened official franked wrapper, registered at the post office at —— in the city of Washington, on the — day of ——, 191–.

—— ——.

16 EXHIBIT B.

A. P. C. Form No. 106-A.

Original.

Report No. 24031. Trust No. W-2326-M.

Demand on Corporation for Stockholder's Interest Without Presentation of Certificates.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (*c*). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (*e*). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

Sec. 1 (*c*). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (*a*). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (*c*). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regualtions heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Sec. 3 (*d*). "The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to, and over corporate

stock, shares, or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company, or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares, or certificates, (2) the right to exercise all voting power appertaining to such stock, shares, or certificates, and (3) the right to receive all subscription rights, dividends, and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares, or certificates, regardless of whether or not such stock, shares, or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares, or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company, or trustee issuing the same."

To Heinr. Franck Sons, Inc.,

Address: Flushing, New York:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders, after investigation do determine that: Richard Franck (name of enemy or ally of enemy) whose address is Ludwigsburg, (last known address) is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in and to one shares of (not classified) stock standing on your books in the name of Richard Franck.

I, as Alien Property Custodian, do hereby require that you shall convey, transfer, assign, and deliver to me as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, every right, title, and interest of the said enemy in said stock, including in respect to the said stock the right which the said enemy may have, (*a*) to receive all notices issued by you to the holders or owners of similar stock, shares, or certificates; (*b*) to exercise all voting power appertaining to such stock, shares, or certificates; (*c*) to receive all subscription rights, dividends, and other distributions and payments, whether of capital or of income, declared or made on account of such stock, shares, or certificates.

I, as Alien Property Custodian, do hereby further require that you note the substance of this demand upon your stock books and/or stock ledger, and that you furnish a copy of this demand to the registrar and/or transfer agent, if any, of the stock in respect to which this demand is made.

I, as Alien Property Custodian, do hereby further require that within ten days from the service of this demand upon you, you

report to me any and all acts which you have done, or omitted to do, pursuant to the requirements of this demand.

Until otherwise directed, you will remit to the Alien Property Custodian at Washington, by check payable to his order, all payments, whether of capital or income, now or hereafter declared or due on account of such stock, shares, or certificates, and you will direct such notices in respect to the said stock, shares, or certificates to the Alien Property Custodian.

This demand is supplementary to any demand which may hitherto have been made upon you, accompanied by the presentation of certificates which represent shares or beneficial interests, for the transfer into my name, as Alien Property Custodian, of such certificates, or for the transfer thereof into the name of any nominee of me as Alien Property Custodian, and this demand shall not prejudice or affect any demand accompanied by such certificates which has been, or which may hereafter be, made.

You are hereby instructed to remit all accumulated dividends direct to this office upon receipt thereof. If checks for accumulated dividends have heretofore been drawn in favor of the enemy and are now held by you, you may send such checks direct to this office. All future dividends shall be remitted to Empire Trust Company as Depositary for Alien Property Custodian. Tsust No. W-2326-M, which has been duly designated as depositary of this trust.

You will also direct all notices hereby demanded, to said depositary and identify each notice by the trust number hereof.

Witness my hand and seal of office this First day of July, 1918.

A. MITCHELL PALMER,
Alien Property Custodian,

(Signed) By J. L. DAVIS.
Managing Director.

17 Service of the within demand accepted this 17th day of July, 1918.

HEINR. FRANCK SONS, INC.,
By EUGENE BEITTER,
Secretary.

Served the within notice and demand on the within-named Heinr. Franck Sons, Inc. at Flushing *in the City of New York,* State of New York, this 17th day of July, 1918, by giving a true and correct copy thereof to Eugene Beitter, a secretary of the corporation of whom said demand is made, at the office of said corporation.

EMPIRE TRUST COMPANY,
(Signature Illegible.)

Served the within demand and notice on the corporation to which this demand is addressed, by transmitting a true and correct copy thereof to the said corporation at the address which appears on the face hereof, in a securely fastened official franked wrapper, registered at the post office at —— in the city of Washington, on the — day of ——, 191–. —— ——.

18

EXHIBIT C.

Trust No. 2326, 21963. Report No. 24031.

Demand by Alien Property Custodian.

To Heinr. Franck Sons, Inc.,
Address: Flushing, New York:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, said proclamations and executive orders, after investigation do determine that those certain shares of your capital stock heretofore registered and standing upon your books in the name of the person or persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature (Signed) F. C. Duvall on the margin thereof), and evidenced or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands,, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given in Column No. 5 on the same line therewith, are enemies and each not holding a license granted by the President*
of them is an enemy / within the purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

As such Alien Property Custodian, by virtue of the authority vested in me, I do hereby seize such shares of stock and each and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and you are required to cancel forthwith upon your books and records all of the said shares of stock listed in said schedule and in lieu thereof to issue new certificates respectively in the name of the person or persons as specified in Column No. 6 of said schedule.

This demand is supplementary to any demands which may have been heretofore made upon you with respect to said shares or certificates and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

---

*Interlineation made before signing. F. C. D.

Witness my hand and seal of office, this 25th day of March, 1919.
(Signed) FRANCIS P. GARVAN,
[SEAL.] *Alien Property Custodian.*

Approved for execution.
SPIER WHITAKER,
Bureau of Law.
3/26/19.

19 Service of the within demand accepted this Eleventh day of April, 1919.

HEINR. FRANCK SONS, INC.,
By E. HICKS HERRICK,
Secretary.

Pursuant to the mandate of the within demand, the said shares of stock have been canceled by indorsement as follows: "The shares of stock represented by this certificate (on record ledger ——) having been seized by the Alien Property Custodian by demand dated the 25th day of March, 1919, the same are hereby canceled pursuant to the mandate of said demand and new certificates numbered 23 & 24 have been this day issued in lieu thereof." April 11, 1919.

HEINR. FRANCK SONS, INC.,
(Signed) By E. HICKS HERRICK, *Secy.*

EXHIBIT A.

Attached to Demand Issued by the Alien Property Custodian, Dated the Twenty-fifth Day of March, 1919, and Identified by the Following Signature: (Signed) F. G. Duvall.

1.	2.	3. Number and kind of shares.			4.	5.	6.
Name of person in whose name shares of stock or other beneficial interests stand or stood.	Certificate No.	Common.	1st preferred.	2nd preferred.	Name of enemy for, on account of, or on behalf of whom shares of stock or other beneficial interests are or were held.	Address.	Name to whom new certificate to be issued.
Internationale Nahrungs und Genussmittel Aktiengesellschaft	20	6,248	....	....	Carl, Robert, Richard, and Walter Franck	Ludwigsburg, Germany	Francis P. Garvan, as Alien Property Custodian, Trust No. 21963.
Richard Franck	21	1	....	....	Richard Franck	Ludwigsburg, Germany	Francis P. Garvan, as Alien Property Custodian, Trust No. 2326.
T. Ellett Hodgskin	22	1	....	....	Carl, Robert, Richard, and Walter Franck	Ludwigsburg, Germany	Francis P. Garvan, as Alien Property Custodian, Trust No. 21963.

The above certificates to be delivered to The Empire Trust Company, New York, N. Y., as depositary for the Alien Property Custodian.

21 EXHIBIT "D."

Trust No. 21963. Report No. 40007.

To Heinrich Franck Sons., Inc.,
Flushing, L. I.:

To T. Ellet Hodgskin,
20 Nassau St., New York City:

To the Commissioner of Patents,
Washington, D. C.:

To all to whom these presents may come:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that Richard Franck, Robert Franck, Carl Franck and Walter Franck, comprising the firm of Heinrich Franck Soehne of Ludwigsburg, Germany, is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain trade-marks and trade-mark registrations, identified as follows:

Registration No.	Date.	Trade-mark.
23,623	Sept. 19, 1893.....	Representation of coffee grinder, coffee pot and an animal.
23,624	Sept. 19, 1893.....	Representation of coffee grinder and signature Heinrich Franck Soehne.
83,863	Oct. 17, 1911.....	Representation of a coffee grinder.

and the following trade-marks:

22 Trampler.
Rosen.
Representation of an Ethiopian.
Representation of a rose forming the base for a lozenge shaped device.
Rosen-Kaffee.
Scheuer.
Representation of St. George killing the dragon.
Facsimile signature Heinrich Franck Soehne.
The letter S enclosed in horseshoe.

and the good will and business pertaining to said trade-marks, and the certificates of registration of said trade-marks, and every right, title and interest with respect to said trade-marks, including all damages and profits recoverable at law or in equity, from any person, firm, corporation or government for past infringement thereof, subject to the rights, if any, of Heinrich Franck Sons, Incorporated, belong to, or are held for, or on account of, or on behalf of, or for the benefit of said enemy, Richard Franck, Robert Franck, Carl Franck and Walter Franck, comprising the firm of Heinrich Franck Soehne of Ludwigsburg, Germany.

As such Alien Property Custodian, I do seize said trade-marks and the certificates of registration thereof, and the good will and business thereunto pertaining, and every right, title and interest with respect to said trade-marks, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights, if any, of Heinrich Franck Sons, Incorporated, and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

23 I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of trade-marks, in respect to the trade-marks above listed.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 28th day of April, 1919.

FRANCIS P. GARVAN,
Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this — day of ——, 1919.

—— ——.

24 *Motion to Dismiss.*

Filed January 22, 1924.

* * * * * * *

Now comes the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esq., Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the bill of complaint, and for grounds for their said motion assign the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein was, at the time the money and

other property involved in this suit was required to be conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, a corporation incorporated within a country other than the United States, and was not at such time entirely owned by subjects or citizens of nations, states or free cities other than Germany or Austria or Hungary or Austria-Hungary.

(2) It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein was at the time the money and other property involved in this suit was required to be conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, a corporation organized within a country other than Germany, Austria or Hungary, and that the control of or more than fifty percentum of the interest, or voting power in such corporation, was not at such time vested in citizens of subjects of nations, states or free cities other than Germany or Austria or Hungary or
25 Austria-Hungary.

(3) The plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 9 of the Trading with the Enemy Act as amended.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia, Attorney for Miller, as Alien Property Custodian, and White, as Treasurer of the United States.

Order.

Filed March 14, 1924.

* * * * * * *

Upon consideration of the motion to dismiss the bill of complaint in the above-entitled cause, and after hearing the arguments of counsel, and the plaintiff having elected to stand upon its bill of complaint, it is, by the Court, this 14th day of March, 1924,

Adjudged, ordered, and decreed that the motion to dismiss be, and the same hereby is, sustained;

And it is further ajudged, ordered and decreed that the Bill of Complaint be, and the same hereby is, dismissed;

And it is further adjudged, ordered, and decreed that the defendants recover their costs in this behalf expended, and that they have execution therefor as at law.

By the Court:

WENDELL P. STAFFORD,
Justice.

26 From the foregoing decree the plaintiff notes an appeal in open court to the court of appeals of the District of Columbia, and the penalty of bond for costs is fixed at $100 or cash deposit of fifty dollars.

WENDELL P. STAFFORD,
Justice.

Memorandum.

March 24, 1924.—$50.00 deposited in lieu of appeal bond.

Assignments of Error.

Filed March 24, 1924.

* * * * * * *

The court in the above entitled case having dismissed the Bill of Complaint and the plaintiff in open court having given notice of an appeal to the Court of Appeals of the District of Columbia, the plaintiff assigns as errors committed by the trial court the following:

First. The court erred in granting the motion of the defendants to dismiss the Bill of Complaint of plaintiff;

Second. The court erred in rendering and entering judgment, order and decree dismissing the Bill of Complaint of plaintiff;

Third. The court erred in not holding that the plaintiff had a right under Section 9 of the Act of Congress approved
27 October 6th, 1917, known as the "Trading with the Enemy Act" and paragraph "A" of Section 9 of said Act as amended, to the return of the property of the plaintiff, because plaintiff was and is a "person" defined by said Act and amendments as including a corporation, and was not and is not an enemy or ally of enemy as defined in said Act and amendments, and was the owner of said property so taken over by the Alien Property Custodian, all as shown by said Bill of Complaint;

Fourth. The court erred in not holding that the plaintiff had a right under the allegations of said Bill of Complaint and said Section 9 and said paragraph "A" of Section 9 of said Act as amended, to the return of its property because the said property so taken over by the Alien Property Custodian was not so taken over as the property of the plaintiff, but as the property of others, and the plaintiff was not declared by the President or by the Alien Property Custodian to be an enemy or ally of enemy;

Fifth. The court erred in not holding that under the Constitution of the United States the Alien Property Custodian could not hold and retain the property of plaintiff, a neutral corporation not declared an enemy or ally of enemy.

Sixth. The court erred in not holding that the allegations in the Bill of Complaint gave the plaintiff a right to the return of its property under paragraph "A" of Section 9 of said Trading with the Enemy Act, and under said Act as a whole;

Seventh. The court erred in other respects apparent of record.

The court for these reasons erred in entering judgment, order and decree granting motion to dismiss the Bill of Complaint,
28 and dismissing said bill.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

Service of the Assignments of Error, and the Designation of the Transcript of Record, acknowledged this 22nd day of March, 1924.

DEAN HILL STANLEY,
Special Assistant to the Attorney General.

Designation of Record.

Filed March 24, 1924.

* * * * * * *

To the Clerk of the Supreme Court of the District of Columbia:

You will please prepare the following as a transcript of record on appeal to the Court of Appeals in the above entitled case:

1. The following papers in full:

(a) The Bill of Complaint.
(b) The Motion to Dismiss.
(c) Order of the Court dismissing the Bill of Complaint.
(d) Appeal in open Court from the said decree.
(e) The Assignments of Error.
(f) This designation of the Record.

2. Memorandum of the following:

(g) Cash deposit of $50.00 in lieu of bond.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

Approved:

DEAN HILL STANLEY,
Special Assistant to the Attorney General.

29 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 28, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed copy of which is made part of this transcript, in cause No. 42058 in Equity, wherein Compagnie Internationale De Produits Alimentaires S. A. is Complainant and Thomas W. Miller as Alien Property Custodian of the United States of America and Frank White as Treasurer of the United States of America are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 9th day of May, 1924.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

EW.

Endorsed on cover: District of Columbia Supreme Court. No. 4164. Compagnie Internationale D. Produits Alimentaires S. A., appellant, vs. Thomas W. Miller, &c., et al. Court of Appeals, District of Columbia. Filed May 14, 1924. Henry W. Hodges, clerk.

In Court of Appeals of the District of Columbia

Compagnie Internationale de Produits Alimentaires, S. A., Appellant,

vs.

Thomas W. Miller, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, Appellees.

Motion to Affirm Judgment—Filed May 21, 1924

Now come the appellees in the above entitled cause and move the Court for judgment forthwith affirming the judgment below on the authority of No. 4014 Behn Meyer & Co. Ltd. v. Miller et al.

Dean Hill Stanley, Assistant Attorney-General, Attorney for Appellees.

In Court of Appeals

[Title omitted]

Judgment—Filed May 23, 1924

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and on a motion to affirm which was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decree by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs on authority of Behn Meyer & Co., Ltd. vs. Miller, et al.

Per Mr. Justice Robb, May 23, 1924.

In Court of Appeals of District of Columbia

[Title omitted]

Petition for Appeal—Filed May 23, 1924

Now comes the petitioner, Compagnie Internationale de Produits Alimentaires, S. A., a corporation, appellant in the above-entitled cause, by its counsel, and shows to the court that on May 23, 1924, a decision was rendered and decree entered against it herein, in which decision and decree, to its damage and prejudice, certain errors were committed, as will appear from the assignment of errors filed herewith.

Your petitioner further shows that the decree of the Court of Appeals herein is subject to review by the Supreme Court under the provisions of paragraphs five and six of Section 250 of the Judicial Code, in that the validity of an authority exercised under the United States and the existence and scope of a power or duty of an officer of the United States are drawn in question and the construction of a law of the United States is drawn in question, and that there are involved questions, among others similar to those in No. 4014, Behn-Meyer & Company, Limited vs. Miller, et al., recently decided by this court, in which an appeal was allowed by this court to the Supreme Court of the United States.

Wherefore, Your petitioner prays the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court, and that a bond to act as a supersedeas be fixed at the sum of $300.00.

Compagnie Internationale de Produits Alimentaires, S. A., Appellant, by Challen B. Ellis, Its Attorney.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS

And now comes Compagnie Internationale de Produits Alimentaires, S. A., the appellant herein, and says that in the record and proceedings of the Court of Appeals in the above-entitled cause and is the rendition of the final decree therein manifest error has intervened, to the prejudice of said appellant in this, to-wit:

1. The court erred in affirming the judgment and decree of the Supreme Court of the District of Columbia, granting the motion of the defendant below to dismiss the bill of complaint, and dismissing the bill.

2. The court erred in not holding that the appellant, the plaintiff below, had a right under Section 9 of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act" and paragraph "A" of Section 9 of said Act as amended, to the return of the property of the appellant, plaintiff below, because appellant, plaintiff below, was and is a "person" defined by said Act and amendments as including a corporation, and was not and is not an enemy or ally of enemy as defined in said Act and amendments, and was the owner of said property so taken over by the Alien Property Custodian, all as shown by said bill of complaint;

3. The court erred in not holding that the appellant, plaintiff below, had a right under the allegations of said bill of complaint and

said Section 9 and said paragraph "A" of Section 9 of said Act as amended, to the return of its property because the said property so taken over by the Alien Property Custodian was not so taken over as the property of the appellant, plaintiff below, but as the property of others, and the appellant, plaintiff below, was not declared by the President or by the Alien Property Custodian to be an enemy or ally of enemy;

4. The court erred in not holding that under the Constitution of the United States the Alien Property Custodian could not hold and retain the property of appellant, plaintiff below, a neutral corporation not declared an enemy or ally of enemy.

5. The court erred in not holding that the allegations in the bill of complaint gave the appellant, plaintiff below, a right to the return of its property under paragraph "A" of Section 9 of said Trading with the Enemy Act, and under said Act as a whole;

6. The court erred in other respects apparent of record.

Compagnie Internationale de Produits Alimentaires, S. A., Appellant, by Challen B. Ellis, Its Attorney.

Service acknowledged, this 23rd day of May, 1924.
Dean Hill Stanley, Attorneys for Appellees.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

The clerk will please prepare a transcript of record on appeal to the Supreme Court of the United States in the above-entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Motion to affirm.
3. The decree.
4. Petition for allowance of appeal and assignment of errors.
5. Order allowing appeal.
6. Bond.
7. Citation.
8. Designation.

Compagnie Internationale de Produits Alimentaires, S. A., Appellant, by Challen B. Ellis, Its Attorney.

Service acknowledged, this 23rd day of May, 1924.
Dean Hill Stanley, Attorney for Appellees.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 24, 1924

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered that said appeal be, and the same is hereby, allowed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

SUPERSEDEAS BOND ON APPEAL FOR $300—Approved and filed May 26, 1924; omitted in printing

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CITATION—In usual form, showing service on Dean Hill Stanley; omitted in printing

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 37, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Compagnie Internationale de Produits Alimentaires S. A., Appellant, vs. Thomas W. Miller as Alien Property Custodian of the United States of America and Frank White as Treasurer of the United States of America, No. 4164, April Term, 1924, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-seventh day of May, A. D. 1924.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

Endorsed on cover: File No. 30,371. District of Columbia Court of Appeals. Term No. 412. Compagnie Internationale de Produits Alimentaires S. A., appellant, vs. Thomas W. Miller, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America. Filed May 27th, 1924. File No. 30,371.

FILE COPY

FILED
MAY 27 1924
WM. R. STANSBURY
CLERK

No. 1061 4/2

Supreme Court of the United States

OCTOBER TERM, 1923. No. —.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and FRANK WHITE, as Treasurer of the United States of America, Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION BY APPELLANT TO ADVANCE.

WADE H. ELLIS,
CHALLEN B. ELLIS,
HENRY ESCHER,
Of Counsel for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

NOTICE.

Sirs:

PLEASE TAKE NOTICE that on Monday, June 2, 1924, on the meeting of the Supreme Court of the United States at noon, or as soon thereafter as counsel may be heard, the undersigned will present to the Court a motion to advance the above entitled case for hearing at the earliest practicable date. A copy of said motion is hereto annexed.

Washington, D. C., May 27, 1924.

Yours, etc.,

WADE H. ELLIS,
CHALLEN B. ELLIS,
HENRY ESCHER,
Of Counsel for Appellant.

To:
THE ATTORNEY GENERAL OF THE UNITED STATES and
THE DEPARTMENT OF JUSTICE,

Attorneys for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Appellees,
Washington, D. C.

Service of a copy of the foregoing motion and the receipt of notice of presentation thereof are hereby acknowledged this day of May, 1924.

.....

Supreme Court of the United States

OCTOBER TERM, 1923. No. —.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and FRANK WHITE, as Treasurer of the United States of America, Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION BY APPELLANT TO ADVANCE.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., the appellant in the above-entitled cause, respectfully moves this Honorable Court to advance this appeal for hearing at the earliest practicable and convenient date.

The suit herein was brought by said appellant corporation to recover the proceeds of its property and for an accounting on the ground that the seizure of its property by the Alien Property Custodian in 1918 was without authority of law, because it was not an "enemy" or "ally of enemy" within the definition

contained in section 2 of the Trading with the Enemy Act, and it was not declared an "enemy" or "ally of enemy" and the property was seized as the property of certain individuals and not as the property of Appellant, as in fact it was.

The definition of "enemy" and "ally of enemy" in the Trading with the Enemy Act is as follows:

> "Sec. 2. That the word 'enemy' as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—
>
> "(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.
>
> "(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.
>
> "(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy.'
>
> "The words 'ally of enemy,' as used herein shall be deemed to mean—
>
> "(a) Any individual, partnership, or other body of individuals, of any nationality, resident

within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'ally of enemy.' "

I.

The facts presented by the record for review are briefly as follows:

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., is a corporation incorporated under the laws of the Confederation of Switzerland and never has done any business either in or with any enemy territory. It is a corporation of a neutral and not of an enemy country. In July, 1918, all of its property in the United States was seized as enemy-owned property and thereafter liquidated by the Alien Property Custodian.

It is contended the seizure was indisputably unlawful when made. The corporation was not an "enemy" or an "ally of enemy" within the meaning of section 2 of the Trading with the Enemy Act (40 Stat., 411, 459, 460, 1020), above quoted, and only the property of "enemy" or "ally of enemy" corporations was authorized by the statute to be seized by the Alien Property Custodian. It was, however, claimed by the Alien Property Custodian that the seizure was authorized because a majority of the corporation's stock was enemy-owned, notwithstanding the facts (1) that the statute did not define as an "enemy" a corporation a majority of whose stock was enemy-owned, (2) that the statute at most subjected to seizure, not the property of such a corporation, but only the interest of the enemy stockholders therein, which was not demanded or attempted to be seized in this case, and (3) that Congress had been urged by the Alien Property Custodian in June, 1918, to amend the Act so as to permit seizure of the property of a corporation a majority of whose stock was enemy-owned, and had declined so to do.

Therefore, as the law stood in 1918 when the seizure was made, the appellant corporation, not being an "enemy" or "ally of enemy," was entitled to sue for and recover its property under section 9 (now numbered 9-a) of the Trading with the Enemy Act; and so the matter remained during the war.

II.

After the Armistice, several amendments to the Trading with the Enemy Act were enacted by Congress (41 Stat. 977, 1147, and the Act of March 4, 1923). These amendments added to section 9, subsection b,

which consisted of a number of paragraphs expressly conferring the right to recover seized property upon various classes of individuals and corporations theretofore classified as "enemy" or "ally of enemy." The original provision as to the right of recovery by those not "enemy" or "ally of enemy" as defined in section 2 of the Act, was re-enacted in the same language and continued in section 9 as subsection a.

Among the classes thus enabled for the first time to recover by virtue of this amendment were *enemy* corporations all of whose stock, however, was non-enemy-owned (par. 6, sec. 9-b, c. 241, 41 Stat. 977, Act of June 5, 1920). Later this right was further expanded by the amendment of March 4, 1923, extending the same privilege to such *enemy* corporations if more than half of their stock was non-enemy owned (par. 11, sec. 9-b, Act of March 4, 1923).

These provisions were intended to enlarge the field of recovery, but have been construed by the courts below to restrict and defeat the right of recovery by *non-enemy* corporations and to deprive them of all right of recovery as regulated and granted from the beginning by section 9-a

III.

It is, therefore, urged that the public interests and the rights of neutral corporations, as well as the duty of the United States to the nations creating said corporations, are involved, and that the earliest practicable hearing should be had. Great prejudice will be involved to the appellant corporation if the six years of unlawful withholding of the proceeds of its property, wrongfully and unlawfully seized in 1918, be further and unnecessarily extended.

IV.

This and another similar case pending in this court present important questions of construction of the Trading with the Enemy Act which have not been settled by this court. In the case of Behn Meyer & Company, Ltd., vs. Thomas W. Miller, *et al.*, No. 921, October term, 1923, this court has granted a motion to advance and the case has been set for argument on November 10th. As that case involves practically the same questions of construction, much labor will be saved, not only to this court but to counsel for the Government and for the appellant, if the cases are argued together.

Respectfully submitted for the consideration and action of this honorable court.

WADE H. ELLIS,
CHALLEN B. ELLIS,
HENRY ESCHER,
Of Counsel for Appellant.

May 27, 1924.

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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 412.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., *Appellant*,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES OF AMERICA, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES OF AMERICA, *Appellees*.

BRIEF FOR APPELLANT.

STATEMENT.

This case comes to this Court on appeal from a judgment of the Court of Appeals of the District of Columbia, filed the 23d day of May, 1924, affirming a decree of the Supreme Court of the District of Columbia which sustained a motion of defendants to

dismiss plaintiff's bill of complaint. The Court of Appeals affirmed the decree of the Supreme Court of the District of Columbia expressly on the decision by itself in the case of *Behn, Meyer & Company, Ltd. v. Miller, et al.*

The action is the usual one under the Act known as "Trading with the Enemy," section 9, to recover the proceeds of certain stock, a sum alleged to be in excess of $540,000, which appellant says belonged to it, a neutral corporation, and which was seized and sold by the Alien Property Custodian as belonging to four certain persons, Carl, Robert, Richard and Walter Franck, who were determined to be enemies not holding a license granted by the President.

There are no opinions in the courts below.

The facts are as follows:

The Bill of Complaint.

The allegations of the bill, which are admitted by the motion to dismiss, show that the plaintiff below, appellant here, is a corporation organized and existing under and by virtue of the laws of the Confederation of Switzerland, having its principal office and place of business in Switzerland and no office, place of business or agent within the United States. It was organized and doing business prior to the beginning of the World War in Europe (Rec. p. 2) and was, and is, incorporated in strict compliance with the laws of Switzerland and its corporate acts registered there, constituting public records of that nation (Rec. p. 5.)

Among its assets, the corporation was the owner,

prior to July 1, 1918 and prior to the beginning of the World War in Europe, of a block of stock amounting to 6,250 shares of a New York corporation, incorporated in 1912, known as Heinr. Franck Sons, Inc. The Swiss corporation had not been resident within, or incorporated within, and had not done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States was at war since April 6, 1917, or any ally of any such nation. It has never been proclaimed by the President as included within the terms "enemy" or "ally of enemy" as defined by act of Congress, and no finding has ever been made that it was an enemy or ally of enemy, either by the President aforesaid, or by the Alien Property Custodian or by any other authority. (Rec. p. 3.)

By demand, dated July 1, 1918, addressed to Heinr. Franck Sons, Inc., Flushing, New York, the Alien Property Custodian found and determined that Carl, Richard, Robert and Walter Franck were enemies not holding a license granted by the President, and required the conveyance from said corporation of 6,248 shares of its stock, the right, title and interest of which were alleged to be held by Carl, Richard, Robert and Walter Franck (and one share held by T. Ellet Hodgskin and one share alleged to belong to Richard Franck) (Rec. p. 5). By supplementary demand, dated March 25, 1919, the Alien Property Custodian again determined that the 6,248 shares belonged to Carl, Richard, Robert, and Walter Franck, that these

persons were enemies not holding a license granted by the President, and he thereby seized such shares of stock and required the same to be transferred to him. (Rec. p. 6.)

By supplementary demand of April 28, 1919, the Alien Property Custodian made similar findings regarding the four Francks and determined that certain trade-marks and trade-mark registrations therein specified, and the good-will and business belonging to said trade-marks, belonged to or were held for the benefit of enemies comprising the firm of Heinr. Frank Sohne of Ludwigburg, Germany, and seized the trade-marks and the certifications of registration thereof, and the good-will and business thereof, and required them to be conveyed to him. (Rec. p. 6.)

The said stock and trade-marks, registration, business, and good-will were thereupon conveyed to the Alien Property Custodian as required by him, and were subsequently sold, together with patents and trade-marks, to one David McMorran. (Rec. p. 6). There were likewise seized by the Alien Property Custodian certain dividends due but unpaid, upon the said stock, or which thereafter were declared thereon. The proceeds of the sale and the dividends collected on the stock amounted to upwards of $540,000. (Rec., pp. 5-6.)

The property and assets seized by the Alien Property Custodian were, as a matter of fact, prior to and at the time of such seizure, the property of the Swiss corporation, Compagnie Internationale De Produits Alimentaires, S. A., as was shown to the Alien Property Custodian and as admitted by the motion to

dismiss, (which has the effect of a demurrer); and were *not* the property of the four Francks or of Heinr. Frank Sohne of Ludwigburg, Germany. (Rec. p. 5.)

No demand, or notice of demand for the property and assets, however, was ever made or served upon the Swiss corporation nor any one representing it, and no due or legal determination was made at the time of seizure or at any time, under the Trading with the Enemy Act or otherwise, that the Swiss Corporation was an "enemy" or "ally of enemy." (Rec. p. 7.) The bill charges that the taking over and seizure of the property of the complainant were illegal and void in that the complainant was not an "enemy" or "ally of enemy." (Rec. p. 7.)

The bill further shows the history of the organization of the corporation known as Heinr. Franck Sons, Inc., the total amounts of its capital stock (6,250 shares) and the distribution, prior to 1914, of the shares of stock (with the exception of two in the names of individuals to qualify them as directors of the American corporation) to the Swiss corporation. (Rec. p. 3.) The bill also shows the history of the organization of the appellant corporation and the original amount and apportionment of its capital stock. (Rec. p. 4.)

Paragraph 9 of the bill sets forth in detail the percentage of the capital stock of the Swiss corporation owned by enemies and the proportion, less than a majority, known to be in the hands of non-enemies at the time of the seizure of the property of the corporation (Rec. p. 5), and also the proportion of the

capital stock distributed among neutrals (more than 50%) at the time of the filing of the bill. Also there is shown the distribution of bond holdings, which was slightly over 49% neutral and 4% unknown at the time of the seizure and at the time of the filing of the bill 59% Swiss. (Rec. p. 5.)

It is further shown by the bill that because of depression in business at the end of the year the appellant company wrote off from its capitalization a large sum, and later, further sums, and by reason thereof its capital has become impaired and the remaining property of the corporation, including the stock or the proceeds thereof, seized by the Alien Property Custodian, constitutes a fund for the benefit of its creditors and bondholders. (Rec. p. 7.)

Due application for return of the property or proceeds was made under Section 9 a of the Trading with the Enemy Act and was denied. (Rec. p. 6.)

The theory of the bill is that the appellant corporation, being a corporation of a neutral country, not doing business in enemy territory, is within the express definition of the statute (Sec. 9 and the reenacted subsection a of Section 9 requiring the return of non-enemy property) a person (and corporation) not an enemy or ally of an enemy within the meaning of the Trading with the Enemy Act, and is entitled to the recovery of its property taken and held by the Alien Property Custodian under the mistaken finding that it was the property of other persons who alone were found and declared to be enemies.

The motion to dismiss proceeds upon the contention

that the appellant, notwithstanding it is a corporation of a neutral country not residing in enemy territory, and not doing business in enemy territory, and not declared an enemy or ally of enemy, is nevertheless forbidden to sue to recover its property because it does not come within the terms of subsection (b) of the Trading with the Enemy Act as amended in 1920 and 1923, which permits the return of property to any corporation outside the United States entirely owned by subjects of states other than Germany and Austria-Hungary, and to any corporation outside of Germany or Austria-Hungary, the control of more than 50% of the interest or voting power of which was vested in subjects of states other than Germany or Austria-Hungary.

Assignment of Errors.

The assignments of error are set forth at pages 26 and 27 of the Record; none have been abandoned; the ones directly raising the questions to be discussed are the following: Assignment No. 2. By this assignment the appellant raises the contention that the language of the statute itself gave appellant the right to the return of its property.

Assignment No. 3. By this assignment the appellant raises the contention that the seizure was mistaken, unlawful and void, because it appears on the face of the proceedings that the property was seized as belonging to four certain persons declared enemies; and was not taken as the property of appellant, and appellant was not declared an enemy or ally of enemy.

Appellant's Contentions.

The appellant contends:

(1) That a proper construction of Section 8 (subsection "a") of the Trading with the Enemy Act, leads to the conclusion that the appellant is not an "enemy" and is entitled to sue for the return of its property:—

(a) That such construction is authorized and required by the language of the section.

(b) That any ambiguity as to the meaning of that language is dispelled by a consideration of the history of the statute and the meaning, in municipal and international law, of the terms used.

(2) Subsection (a) alone of Section 9 of the Act governs, and the right there given to a neutral non-enemy corporation was not taken away, or intended to be taken away, by subsection (b), premitting the return by the President, with or without application, of the property of certain corporations classed in a list of former "enemies" whose property was released after the war.

(3) That the moment it appears that the seizure was wrongful and not in accordance with the law, it will be set aside, before which no objections of the appellees will be considered.

ARGUMENT.

I.

The Statutes Governing.

The statutes to be considered in deciding the issues in this case are certain sections of the "Trading with the Enemy" Act of October 6, 1917, and certain amendments of June 5, 1920, and March 4, 1923, relating to the return of property taken and held by the Alien Property Custodian. In the original "Trading with the Enemy" Act of October 6, 1917, the general subject of the return of non-enemy owned property was provided for in Section 9. It reads as follows, omitting matter not material:

> Sec. 9. "That any person, not an enemy, or ally of enemy, claiming any interest, right or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States * * * may file with the said Custodian a notice of his claim under oath and in such form and containing such particulars as the said Custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled * * *. If the President shall not so order within sixty days after the filing of such application, or if the claim-

ant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months [subsequently extended] after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, [or in the Supreme Court of the District of Columbia, by Act of July 11, 1919], or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant) to establish the interest, right, title or debt claimed, etc."

The word "person" as used in the beginning of the section, was specifically defined in Section 2 of the Act by the statement that the word "person" should be deemed to mean, among others, a "corporation."

The words "enemy" and "ally of enemy" were also specifically defined in Section 2, as follows:

> "That the word 'enemy' as used herein shall be deemed to mean for the purposes of such trading and of this Act—
>
> (a) * * * Any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory. * * *
>
> The words 'ally of enemy' as used herein shall be deemed to mean—
>
> (a) * * * Any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory."

The above Section 9 was the provision in the Act that protected the rights of all *non-enemy* owners, whose property may have been mistakenly seized or may have been improperly held.

After the war, and on June 5, 1920, Congress extended the list of those whose seized property might be released by authorizing the return of property to certain described classes of claimants and omitting the requirement of "non-enemy" ownership. This was done by amending Section 9 and adding some subsections, and several numbered subdivisons of one subsection, in which a list of the added classes was given.

But the rights of "non-enemy" owners were still protected and continued. This was accomplished by a separate subsection, which reenacted the original Section 9 in the same terms, numbering it Section 9 (a).

The subsection which contained the list of additional claimants was numbered (b), reading as follows:

> "(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—
>
> "(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property

hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States, in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the

time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungry and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government—

then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian; *Provided,* That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become *ipso facto* or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or

may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however*, That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein."

Section 9 was again amended by the Act of March 4, 1923, known as the "Winslow Act." That amendment again extended the list of claimants who might recover property. It again re-enacted the provisions of Section 9, and added to the subdivisions of Section 9 (b) several paragraphs, among which was paragraph 11.

> "(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided,* however, That this subsection shall not affect any rights which any citizen or subject may have under paragraphs (1) of this subsection;—"

II.

Construction of the Statutes.

This case is to be determined by a construction of the original Trading with the Enemy Act passed during the war, October 6, 1917, and the two amendments of Section 9 of the Act, one passed in 1920 and the other in 1923.

The intent of Congress is, of course, the guiding principle in the construction. That intent is to be found

in the language used, interpreted in the light of the purpose sought to be accomplished, the situation before Congress, the settled meaning of words as fixed by judicial decisions before the passage of the Act, and the well settled rules of construction of amendments and supplements to laws.

Did Congress intend by the Trading with the Enemy Act and the amendments referred to that a corporation of a neutral country (as a legal entity apart from its stockholders) ***not an "enemy" or "ally of enemy"*** not doing business in enemy territory, and not declared an "enemy," should not be permitted now to recover property belonging to it, seized and held by the Alien Property Custodian under the mistaken assumption that it was the property of *others* who were enemies?

The original "Trading with the Enemy" Act of 1917 provided in Section 9 for the return under certain circumstances of all non-enemy owned property seized by the Alien Property Custodian and specified who might secure the return of such property, stating that "any person" "not an enemy or ally of enemy" claiming any property seized by the Alien Property Custodian, could file a claim for return of property, and if such claim was not allowed, could institute a suit in equity to establish the ownership of the property and secure an order of transfer to the claimant of the property. The provision used the expression "any person," but these words were specifically defined in Section 2 of the Act as including any "corporation." In specifying what persons (including corporations) might recover property, the Act used only the words "not an enemy or ally of enemy," but these words,

"not an enemy or ally of enemy," were specifically defined in Section 2 of the Act by setting forth what would constitute a person or corporation an "enemy" and what would constitute a person or corporation an "ally of enemy." In addition to the description of individual "enemies or allies of enemies," it was there provided that any "corporation incorporated within such (enemy) territory or incorporated within any country other than the United States and doing business in such territory" would be deemed to be an enemy, and so where the word "enemy" was used in the statute, it would mean such corporation; and further that any "corporation incorporated within a country of an ally of an enemy or doing business within such (enemy) territory" should be deemed an "ally of enemy," and so wherever the words "ally of enemy" were used, it would mean such corporation.

The statute, with the statutory definition of words, therefore, clearly and unequivocally provided, so far as the argument here is concerned, that any foreign corporation not incorporated within the territory of any nation with which the United States is at war or the ally of such nation and not doing business in the territory of any nation with which the United States is at war nor in the territory of an ally of such nation, whose property, or any part thereof, shall have been delivered to the Alien Property Custodian may file notice of claim for such property, and if the return of such property is not ordered may (within the time limited) institute a suit in equity, and secure transfer of the property to the claimant.

The statute thus provided as definitely and clearly

as if enacted in the language stated. There were no exceptions, or modifications, in any way material to this discussion. Of course, a claimant presenting a claim as a corporation must have been a *bona fide* corporation and must have owned the property prior to the passage of the Act, but there was no other limitation, either express or implied.

What did Congress mean by the word "corporation" used in the statute? Did Congress mean a corporation as a legal entity, separate and apart from its shareholders, as was the settled meaning of the word "corporation" as interpreted in all statutes prior to the enactment of the Trading with the Enemy Act, or did it mean something different, some new and strange definition never theretofore signified by the use of the word "corporation," to wit: The body of shareholders or enough of them to constitute the majority or part of them or all of them? There is nothing whatever either in the other provisions of the Trading with the Enemy Act, the circumstances of the enactment or the purposes of the Act to indicate that Congress intended to use the word "corporation" in any other than its ordinarily accepted sense, and there is everything to indicate most clearly that the word was intended to be used in its ordinarily accepted sense. Words in a statute are presumed to be used with their ordinary meaning, especially if that meaning has been well settled by judicial decisions interpreting prior Acts, and words in a statute will be held to have their ordinary meaning unless there is a clear intent to the contrary by specific definition or plain exposition in

other parts of the same statute. These are well settled rules of construction.

It must be conceded, therefore, that when Congress provided for recovery of property by a corporation of a neutral country, it meant the corporation as an entity, and did not mean stockholders. So, the appellant company, being a Swiss corporation and not doing business during the war in enemy territory, and being a corporation organized in good faith and having acquired in good faith, prior to the passage of the Trading with the Enemy Act, the property in question, was entitled under Section 9 of the Act to file its claim and upon establishment of its ownership of the property to have the property returned, or if not returned in that way, to secure its return by bill in equity.

That was the fixed right of the appellant Company under the original Trading with the Enemy Act. That right had already been given. Did Congress intend to withdraw it by subsequent enactments passed several years after the war and which provided that among those who were by the original Act deemed "enemies" or "allies of enemies," certain of them might nevertheless, under those amendments recover their property, and by including among those who might so recover certain corporations of a particular character and ownership?

The first and most natural assumption, in answering this question, is that Congress would not intend the taking or holding of the property of neutrals, several years after the war, to a *greater extent* than it intended to take or hold during the war emergency. This is especially true when it is seen that the general pur-

pose of the post-war enactments is clearly and obviously a partial *distribution* of the property in the hands of the Alien Property Custodian, and a plain *addition* to the list of those who might get their property back by the giving of rights to many different classes of former owners of alien property who theretofore, and by the original Act, had no right to return of their property.

The amendment of 1920 was clearly dealing with the right of recovery of those who had no right to recover under the original act because they were enemies or allies of enemies within the terms of that original act. These amendments enlarged the right of recovery. The original act required return of property only to those who were not "enemies" or "allies of enemies." The amendments allowed return of property to certain classes of claimants even though they had been "enemies" or "allies of enemies"—for example, to a wife who was an "enemy" under the original act because of marriage to a German; to a citizen of any of the states that were part of Germany or Austria but which, after the war, had become citizens of the new states set up by the Peace Treaty. Among such classes were foreign corporations incorporated in neutral countries, or even in Germany, which could not have claimed under the original act because they would be "enemies" or "allies of enemies," but could claim under the amendments "if entirely owned" by neutrals; or (under the amendment of 1923), if more than 50 per cent of the stock was owned by neutrals, and the corporation had not been incorporated in Germany.

These extensions of the right to recover property were not intended, as shown by the very purpose and spirit in which they were enacted, to *restrict* the claimants who might secure return of their property under the original Act, when it was mistakenly seized or ought not to have been seized. The original Act provided, very properly and necessarily, that property taken as the property of enemies should, of course, be returned, if the fact was that the owner was *not an enemy or ally of an enemy.* The post-war amendments dealt with the return of property even though correctly seized, as enemy property and not under mistake. This was in pursuance of a policy naturally more liberal toward the release of seized property than the original war measure of 1917. The contrast is plain and conspicuous. There can be, therefore, no presumption of intent on the part of Congress by the post-war amendments, to repeal the war provisions for the return of property mistakenly seized, nor to revise and restrict the list of *non-enemy* claimants allowed to recover under the original Act.

The amendments of 1920 and 1923 dealt primarily with the cases of former "enemies" or "allies of enemies" who were given a right nevertheless (as a matter of grace) to secure the return of property in the hands of the Alien Property Custodian. They were not dealing with the definition of "enemy" or "ally of enemy" used in the original Act. Those words had already been specifically defined. That definition stood. It was not repealed directly, or by implication, because there were no definitions in the amendments. But even if there had been definitions of particular

expressions in the new amendments these would not repeal specific definitions particularly given of expressions in the original Act.

And yet the contention against the right of a neutral corporation to recover its property necessarily involves the proposition that because Congress, after the war, gave a right to a foreign corporation even though an enemy, to recover property if the corporation was entirely owned by neutrals, or if the majority of its stock were owned by neutrals, therefore the definition of a neutral non-enemy corporation entitled to claim under the original Act, was necessarily to be a corporation entirely owned, or 50 per cent owned, by neutrals. To state this contention is to answer it. The argument that Congress intended to *withdraw* from *non-enemy* corporations rights which had been given even in the drastic war measure of the Trading with the Enemy Act because Congress passed statutes several years after the war extending even to certain *enemy* corporations the right to recover their property, cannot commend itself as a natural construction of acts of Congress, aside from the fact that such construction is not supported by any language in the enactments.

To test the matter: Congress provided in the original Trading with the Enemy Act, by its definition of "corporation" and by the settled interpretation of the words used, that a corporation as a legal entity and without regard to shareholders could, if a corporation of a neutral country and not doing business in enemy territory, recover property that had been seized by the Alien Property Custodian as the prop-

erty of others but which turned out to have been owned by the neutral corporation; the post-war amendments provided that certain corporations, whether "enemies" or not, could recover their property if entirely owned, or majority owned, by neutrals, and though the property had been properly seized originally as enemy property. There was in this no repeal; there was merely an enlargement,—the giving of that in addition to that which had been given before. The amendments would have had precisely the same character and effect if the original statute had specifically added to the word "corporation" the words, "regardless of stock ownership" or had defined a corporation in any other way. In other words, the post-war amendments did not need to repeal the definitions in the earlier statutes in order to be effective; therefore, no repeal by implication could be inferred.

The conclusion is inevitable that the amendments of 1920 and 1923 do not affect, alter, modify or repeal the rights, whatever they were, specifically granted to neutral, non-enemy corporations. If, under the original Trading with the Enemy Act, a non-enemy corporation meant the non-enemy character of the legal entity (apart from its stockholders) to be determined by the place of incorporation and the places of doing business, then the right of a non-enemy, neutral corporation to recover its property exists today just as much as it did before the amendments of 1920 and 1923.

The settled interpretation of the word "corpora-

tion" defined by judicial decisions prior to the enactment of the Trading with the Enemy Act, the situation before Congress when the Trading with the Enemy Act was enacted, and the purpose and scope of the amendments of 1920 and 1923, all confirm this construction.

III.

Settled meaning of the word "Corporation" used in original section 9 and re-enacted section 9-a.

That the word "corporation" used in written instruments or in statutes means the corporate entity distinct from the stockholders is so conclusively determined by judicial decisions that it is hardly necessary to cite any authorities on the point. It has several times been so held or assumed in the decisions of this court.

National Park Bank v. Remsen, 158 U. S. 338, 344.
Pullman Palace Car Co. v. Mo. Pac. R. R. Co., 115 U. S. 587.
Conley v. Mathieson Alkali Wks., 190 U. S. 406.
United States v. Delaware & Hudson Co., 213 U. S. 366, 413.

The word has the same meaning in international law and has been so used and interpreted in numerous instances. In Moore's *Digest of International Law*, Vol. 6, p. 641, it is said:

> "It is well settled that a government may intervene in behalf of a company incorporated under its laws, or under the laws of a constituent state or province. In such case the act of incorporation

> is considered as clothing the artificial person thereby created with the nationality of its creator, without regard to the citizenship of the individuals by whom the securities of the company may be owned. Hence we find in general claims conventions that the submission or settlement uniformly embraces 'all claims on the part of corporations, companies, or private individuals, citizens of the United States,' or of some other government, as the case may be. In other words, the corporation is recognized as having, for purposes of diplomatic protection, the citizenship of the country in which it is created."

And Congress, in legislating with reference to the property of foreign corporations, would be presumed to use the word as it is understood in international law.

In *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118, it is said:

> "An Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations as understood in this country."

If, therefore, there could be any doubt as to the sense in which Congress used the word "corporation," in original Section 9 or 9 (a), that doubt would be dispelled when it is seen that in the decisions of the courts and in international law the word has a settled meaning as the legal entity separate and apart from the stockholders.

Nor is the question affected by the decision in *Daimler v. Continental Tyre & Rubber Co.* (1916 2 A. C. 207), except that the case emphasizes the point as to the intent of Congress which we are making. In that case it was held that under the British statute a British company, all of whose stock except one share, was owned by Germans, was an enemy. But that case arose under the British statute before the passage of our "Trading with the Enemy Act," and was particularly called to the attention of Congress when the Trading with the Enemy Act was under consideration with the advice by Assistant Attorney General Warren in a communication to the Chairman of the House Committee that:

> "It is intended by this bill to avoid all the confusion and difficulties which have arisen in England by the attempt on the part of the courts to go behind the corporate charter and corporate entity. *Continental Tyre & Rubber Co. Ltd. v. Daimler Co. Ltd.* (1915), 1 K. B., 893; *Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.* (1916 House of Lords), 2 A. C. 307." (Hearings before Committee on Interstate and Foreign Commerce on H. R. 4704, p. 96.)

It becomes plain, therefore, by whatever test is applied—the context, the settled meaning of words or the situation before the legislative body—that Congress used the words "corporation" in the original Section 9 and the same section reenacted as Section 9-a, in the ordinary sense.

Such being the case the meaning cannot be stretched or modified upon any imagined policy of Congress, not

expressed in the law. The executive department administering the law cannot mold the statute to meet its views of what might be considered the policy that should, or could have been adopted; nor will the Court so mold the statute. Said Chief Justice Marshall in *Brown v. United States*, 8 Cranch 110, 129:

> "Like all other questions of policy, it is proper for the consideration of a department which can modify it at will; not for the consideration of a department which can pursue only the law as it is written. It is proper for the consideration of the Legislature, not of the Executive or judiciary."

And more recently Mr. Justice Harlan said:

> "The court cannot mold a statute simply to meet its views of justice in a particular case. Having, in the mode indicated, ascertained the will of the Legislative Department, the statute as enacted must be executed, unless found to be inconsistent with the Supreme law of the land." *L. & N. R. R. Co. v. Motley*, 219 U. S. 467.

Under settled rules of construction, therefore, it is clear that by Section 9 (a) a corporation (apart from its stockholders) of a neutral country not doing or having done business in enemy territory is entitled to recover its property seized by the Alien Property Custodian because it is a person (expressly defined to include a "corporation") and is not an "enemy" or "ally of enemy" (as expressly defined).

The appellant, therefore was entitled to recover its property because within the express definition in the Trading with the Enemy Act (Section 9 as originally enacted, numbered 9-a as re-enacted) because it was a

"person" "not an enemy or ally of enemy," the statute admittedly authorizing the recovery of property of any person not an enemy or ally of enemy; and the word "person" being expressly defined to include a "corporation," and an enemy or ally of enemy corporation being expressly defined to be "a corporation incorporated within such (enemy or ally of enemy) territory," or if incorporated elsewhere, "doing business with such territory.

The word "corporation" used in the statutory definition obviously meant the corporate entity and not the stockholders. The contention to the contrary is wholly unjustified by any rules of interpretation of statutes. Not only does the context clearly show the sense in which the word "corporation" is used, but that word had come to have a settled meaning before the enactment of the Trading with the Enemy Act, and was therefore used, of course, by Congress according to the settled meaning.

IV.

The Language of Sub-section (b) of the Amendment of 1920 Clearly Indicates an Intent to Enlarge the Rights of "Enemy" Owners and not to Restrict the Rights of "Non-enemy" Owners.

That the purpose and intent of the enumeration of the eight classes of owners of alien property, given the right to return of property by the post war amendment (Section 9b) to the Trading of the Enemy Act, was to *add to* and *not to restrict* the rights of claimants, is shown not only by a fair reading of the text,

but by the circumstances under which the enactment was passed, the end in view and the conditions which the amendment sought to relieve.

The original trading with the Enemy Act provided broad powers as to the seizure of alien property. But it very carefully provided also (in Section 9), for the recovery by the owner of any property mistakenly seized, that is, where the owner turned out to be not an "enemy" or "ally of enemy" as defined by the law. Thus the rights of "non-enemy" owners were guarded. But much property had been seized which belonged to those who, though coming within the definition of "enemy" or "ally of enemy" were only technically "enemies" (such as an American woman who had married a German, a citizen of one of the newly created states, neutral persons, including corporations, which had merely done business with the enemy, etc.) which it was deemed desirable should not be retained after the war had ended.

The Secretary of State had brought the matter to the attention of Congress and the Attorney General. On May 5, 1920, he wrote the Attorney General with reference to certain property held by the Alien Property Custodian, which could not be released under the law as it then stood, but which the Department felt should not be retained in view of the cessation of hostilities. He stated:

> "The various neutral and allied states whose nationals' property has been taken over by the Alien Property Custodian by reason of their residence in enemy or ally of enemy territory, or

otherwise, for sometime have been pressing for the release of such property."

(66th Congress, 2d Session, Rep. 1089, p. 5.)

On May 21 1920 the Secretary of State wrote the Chairman of the House Committee in charge of the bill with reference to the draft of the proposed law:

> "The draft, it is understood, is largely based on representations from this department made in view of the fact that the Attorney General holds that under the trading with the enemy act in its present form he is unable to release property to owners, who when it was taken over were included, for any reason, in the terms 'enemy' or 'ally of enemy' as used in the act and consequently in spite of strong representations by various neutral and associated governments, it has been impossible to return the property of their nationals, which it would appear this Government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this Government with the Governments concerned, and I am strongly of the opinion that Section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property."
>
> (Report, p. 7.)

In a communication to the House Committee on Interstate and Foreign Commerce the Attorney General had stated, referring to the draft of a bill to amend Section 9:

> "I am herewith forwarding you a draft of a bill to amend section 9 of the trading with the enemy act, which I believe will provide the relief requested by the Secretary of State. For your convenience, I shall briefly analyze its provisions and

indicate the change which it would make in existing law.

"Section 9 has been divided into subsections. Subsection (a) is identical with the present provisions of section 9 of the trading with the enemy act. It contains the same provisions for relief of any person not an 'enemy or ally of enemy' as those terms are used in that act."

(Report, p. 3.)

The Attorney General also stated in another communication to the Committee:

> "Subsection (b) of the proposed amendment provides in substance, for the return of all *enemy* property, except that held by persons who are in fact *bona fide* subjects or citizens of Germany, Austria or Hungary."
>
> (Report, p. 5.)

The Attorney General had particularly in mind the property of those persons (including corporations by the definitions in the law) who were "enemies" only because "doing business in enemy territory" and stated that there would be permitted the return of property to:

> "Persons whose property was sequestrated because of the fact that they were doing business within enemy territory (provided they are not citizens of enemy countries)."

All these communications referred expressly to the property of those who were "enemies" by the definition of the Trading with the Enemy Act as distinguished from "non-enemies" whose rights were already fully provided for.

These communications were referred to in the report of the House Committee on Interstate and Foreign Commerce (66th Congress, 2d Session, Rep. 1089) and the House Committee stated the purpose of the act to be what had been represented in such communications. The report stated (pp. 2, 3):

> "The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State."

And so Congress passed the amendment of 1920 to the Trading with the Enemy Act, adding eight classes of owners of alien property who might regain their property and provided that the President might, with or without application therefor, order the return of such property, if he determined that the owner thereof was: (1) a citizen or subject of any nation other than Germany or Austria-Hungary; (2) a woman of a neutral or associated nation who had married a citizen of Germany or Austria-Hungary; (3) an American woman married to a citizen of Germany or Austria-Hungary; (4) diplomatic or consular officers of Germany or Austria-Hungary; (5) a citizen of Germany or Austria-Hungary interned in the United States; (6) a partnership, association or corporation outside the United States entirely owned by citizens of states other than Germany or Austria-Hungary; (7) the Government of Bulgaria or Turkey; (8) the Government of Germany, Austria, or Hungary, or Austria-Hungary.

Each and every paragraph enumerating the eight classes made possible *additional claimants* to property held by the Alien Property Custodian. In some cases the owners could not have claimed before because, though neutral, they had "done business within enemy territory"; in other cases such owners could not have claimed before because they were deemed subjects of enemies. In no paragraph was there any language of negation or limitation of rights already given, nor did the sub-section purport to be exhaustive of the owners of alien property who might secure return of such property.

To make the matter doubly sure, Congress reenacted the earlier Section 9, making it Section 9(a) and reaffirmed the rights of *non-enemies* exactly as they were before. As a question of interpretation of statutes the matter is as plain as if Congress had stated in express words: As to "non-enemies" (defined by the act) their rights shall remain as before; as to "enemies" (defined by the act), whether such because doing business within enemy territory or for other reasons, their rights shall be as now given.

This view as to the purpose and meaning of sub-Section b was again expressed by the Attorney General in one of the earlier cases which arose under subsection (b) (*Opinion of Attorney General, Claim No.* 8425, *Vereinigte Oesterreichische Textilindustrie* A. G.)

In considering a claim for refund by an Austrian corporation (entirely owned by a Czechoslovak corporation) which applied and could apply, if at all, under sub-section (b) only, and denying refund because the

corporation did not bring itself strictly within the words "owned by citizens or subjects of nations other than Germany, etc.," the Attorney General had occasion to point out the intent and effect of sub-section (b) and its contrast with sub-section (a). He said:

> "Second, subdivision (b) is composed of eight particular and specific cases not covered by the general provisions of subdivision (a), and under this subdivision property likewise may be returned."

He then enumerated the eight classes and added:

> "In other words, subdivision (b) of Section 9 includes those *who would not be eligible to receive the return of their property had this subdivision not been enacted and it is enabling in nature, rather than restrictive.*"*

In view of the manifest purpose of Congress, the situation for which relief was intended, and the arrangement and nature of the provisions, can it fairly be contended that because Congress, after the war, *added*, by a separate subsection, a right to a partnership, as-

* This opinion was referred to (as the "Votag" case) and quoted from by the Attorney General in the report to the President, denying the claim of the appellant corporation here. In that report it was sought to distinguish the "Votag" case by reference to further comment in opinion to the effect that "the intent being obvious that there be an investigation of the beneficial ownership * * * and ascertaining the status of the individuals actually owning the stock." But the "intent" referred to, as explained in the opinion, was the intent of subsection (b) in using the words "citizens or subjects" instead of the word "person" found in subsection (a), which had been specifically defined to include a corporation. And the Attorney General held that for this reason Congress did not mean to include a corporation by the words "citizens or subjects" in the particular part of subsection (b) permitting return of property to a corporation "entirely owned by citizens or subjects" of a neutral State.

sociation or corporation outside of the United States, though an enemy, entirely owned by neutrals or citizens of newly created states, Congress must necessarily be taken to have *denied* the right, already given, and contemporaneously reaffirmed, of all other non-American neutral corporations not enemies or allies of enemies?

Such construction is opposed to all sound principles of interpretation. Certainly such implication from the language of subsection (b) is not "clear, necessary and irresistable" (Chief Justice Marshall in *Faw v. Marsteller*, 2 Cranch 10, 23). This is not even an instance of general terms on the one hand and particular words on the other hand, on the same subject and for the same purpose; it is an instance of general terms in one section on one subject and for one purpose, and particular words in another section on another subject and for another purpose.

Nor is this argument as to intent, weakened by the fact that Congress did, in still a third subsection (e), with reference to the allowance of debts, use language that *was* clearly meant to apply to all cases and all claims, as held by this Court in *Banco Mexicana v. Deutche Bank* (Sup. Ct. Advance Opinions 1923-1924, No. 8, p. 230). The language of subsection (e) shows strikingly that where Congress *did* intend to limit or restrict rights, whether given by previous legislation or not, it did so in words, not of *permission* only but of negation, and in words that were plainly all inclusive. The wording of subsection (e), with reference to debts, is as follows:

"nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

Whatever ambiguity might be thought to be here, was resolved by the plain language, about as emphatic, and inclusive a *negative* of rights as words could express.

In subsection (b) there are no words of restriction, but only words of permission; there is no evidence of the negativing of rights, but only the granting of additional rights; there is no indication of limitation of or inconsistency with the previous section 9, but there is plain indication of harmony with section 9 and the re-enacted section 9a. There is every presumption, therefore, that Congress intended to continue the right of a non-enemy neutral corporation expressly given by section 9 and expressly repeated in section 9a, and not to negative or limit the right by its provision as to certain selected corporations in the next succeeding subsection.

V.

The Amendment of 1923 was Merely a Further Extension and Enlargement of Rights to Return of Property, and did not Restrict the Rights of Non-Enemy Corporations Given by the Original Act, or by the Re-enacted Section 9-a.

On March 4, 1923, Congress passed what was known as the Winslow Act (42 Stat. 1511) again amending and

enlarging Section 9 of the Trading with the Enemy Act. That amendment was directed entirely to a partial distribution of all the funds in the hands of the Alien Property Custodian, as was well known at the time. Its principal feature was the return of all the property to enemy claimants who owned not over $10,000 and the return of at least $10,000 of the funds held for all other enemy claimants. Incidentally the amendment also extended, by addition of new classes, the eight classes of claimants provided for in the previous amendment of 1920.

One of the classes so added was the class of corporations incorporated in any country other than Germany or Austria-Hungary where the control of more than 50 per cent of the interest or voting power of such corporations was at the time of seizure, and at the time of return, vested in citizens of nations other than Germany or Austria-Hungary. (Paragraph 11, sub-section (b) of Section 9.)

The purpose of the amendment of 1923 was so clearly to provide for the distribution of the Alien Property Custodian funds to a large number of *additional "enemy" claimants,* that it is not logical to imply from its language any repeal or limitation of the rights of *"non-enemy"* claimants. This is especially true since there are no words in which such limitation can be found, and the act itself re-enacted the original Section 9 making it Section 9-a, and re-stated, in the same terms, the rights of "non-enemy" claimants.

The same reasoning which requires the conclusion that sub-section (b) of amendment of 1920 did not repeal or restrict the rights given in Section 9-a applies

with equal force to sub-section (b) in the amendment of 1923. An interpretation of this amendment, therefore, does not require further discussion.

VI.

The Question of Policy Involved.

The suggestion that the rights of foreign corporations whose property was seized by the Alien Property Custodian are to be governed solely by the citizenship of some of the stockholders, is based upon some assumed or imagined policy of Congress in the Trading with the Enemy Act to seize and hold the property in the United States of foreign corporations, even though not doing business with the enemy, if there was any interest, however slight, of such corporation held by the enemy. Aside from the fact that the very question of the policy of going behind the corporate entity was before Congress, as shown by the hearing on the original bill, and that Congress deliberately used the word "corporation" with its settled meaning, there is a higher policy, more important to our interests, which it is more reasonable to believe Congress intended to adopt in its legislation. This is the policy of recognizing the rule of international law that the corporate entity is entitled to the protection of its government.

There are many American corporations which have large interests abroad. These corporations are entitled to feel that their interests and their protection are not jeopardized by the purchase of a share of stock, which they could not control, by a citizen of some other

country. The recognition in international law of the corporate entity of American corporations is a matter that we have insisted on many times in our diplomatic relations. To upset this rule now, and to announce to other nations that in our dealings with the property of their citizens we ignore the corporation as a citizen, would be to invite a like upsetting of the rule by foreign nations having the property of our corporations in their territory. The Trading with the Enemy Act dealt with the property of nationals of many neutral states. It had an international aspect, and aside from every other consideration, it should be construed in harmony with well settled rules of international law and not in conflict with them. (*Murray v. Schooner Charming Betsy*, 2 Cranch. 64, 118.)

The appellant here is a Swiss corporation. The treaty with Switzerland of 1850, Articles 1 and 2 (which is to be liberally construed, *Hautenstein v. Lyhan*, 100 U. S. 483) seeks to give protection to Swiss nationals in the United States to the same extent that American nationals are given protection in Switzerland. The language is:

> "No pecuniary or other more burdensome conditions shall be imposed upon their residence or establishment or the enjoyment of the above mentioned rights than shall be imposed upon citizens of the country where they reside nor any condition whatever to which the latter shall not be subject."

By international law a "citizen" of Switzerland would include a corporation. There is not to be as-

sumed in the legislation of Congress with reference to foreign property in the United States any intent to be inconsistent with this treaty—certainly unless plainly and unmistakably expressed.

The desirability of the recognition of the corporate entity, separate and apart from the stockholders, bondholders or creditors, is not any longer open to question. It has long since become a settled policy of law. The reasons for it need not now be re-stated. The confusion resulting from any other rule has long been recognized. If a corporation means something else than the legal entity which, in law, is the only owner of its property, and if its nationality is not to be determined by its place of incorporation, but by the residence of some, a large part or a small part, of its stockholders or bondholders or creditors, where is the line to be drawn, and what is to be the test? The difficulty is apparent.

In the case of the particular corporation, appellant here, at the time its bill was filed, the majority ownership of its stock was in the hands of Swiss, Italian and English shareholders, though at the time of seizure less than a majority was so held (Rec. p. 5). The bonds of the corporation were largely in the hands of neutrals, as set forth in the bill (49 per cent Swiss, Italians or aliens, and 4 per cent unknown) and at the time of the filing of the bill citizens of Switzerland owned over 59 per cent. (Rec. p. 5.) According to the allegations of the bill, which are admitted, the bondholders have the real substantial interest in the assets of the corporation by reason of the impairment of its capital. (Rec. p. 6.)

The only safe rule, universally acknowledged as

proper, is the simple one of the recognition of the corporate entity. This is the rule we believe it is manifest Congress intended to adopt, and did adopt in its legislation as to non-enemy property.

VII.

The Seizure was Wrongful and should be set aside as not in Accordance with the Provisions of the Act.

The power of the President, exercised through the Alien Property Custodian, under the Act, is very broad; the only redress which an injured party has is a suit under Section 9. This proceeding is said to be analogous to the common procedure in garnishment.

> "The summary power to sequester property depends upon the protection necessary to secure the United States in the assertion of its eventual right by capture; the property must be held in custody until any dispute shall be determined, just as is done in replevin or attachment. In the case of chattels or tenements, this involves possession *ad interim* of the property itself, since otherwise the chattel might be delivered or the profits collected and disbursed. That would make ineffectual any final decree of title." (Learned Hand, J. in *Simon v. Miller*, 298 Fed. 520.)

But, just because the procedure under the Act is similar to that of garnishment, it follows that the form of law prescribed must be complied with and that what is done outside thereof is ineffectual for any purpose. Here, the finding that the four Francks had an interest in the stock seized, was a nullity because the fact was at that time that the title was in a wholly differ-

ent person, to wit, the appellant corporation. True, the custodian declined to recognize the legal existence of appellant, because he suspected that the Francks were masquerading under the form of the corporation. He happens to have been entirely wrong and the sole question is as to the consequences of his error.

It has been decided in the case of *Simon v. Miller, supra,* that on this state of affairs, the capture must be set aside before the defendant may assert any further defenses whatsoever:

> "However, I need not rely upon either of these points. As I have already said, the Custodian's power to seize property which may not in the end prove to be of enemy character, depends solely upon the right of the United States to attach and impound what might otherwise be removed or dissipated. It is an interlocutory remedy designed to make effectual the capture of true enemy property. Central Trust Co. v. Garvan, *supra.* When the seizure is unlawful the petition under Section Nine *does no more than establish the plaintiff's right and the consequent illegality of the capture.* It is analogous to the violation of an attachment levied upon the goods of a third person. If the suit may be answered by an independent claim against the plaintiff the seizure itself is legalized, the defendant is put in exactly the same position as though the seizure had been valid. To pursue the analogy of attachment, it would be as if the creditor might support an attachment of A's property for the debt of B, by an independent claim against A. *The petition, while indeed not possessory, is similar to a possessory suit in this, that until the original wrong has been righted the defendant may not undertake to pursue other claims against his victim. Any-*

> *thing less would be a premium upon lawless seizures by the sovereign, the fountain of justice.* The defendant must therefore work out his right as captor of Albert's property after he has restored the plaintiff to the position he would have occupied but for the wrongful seizure." (*Simon v. Miller, supra.*)

But the Government replies that, however great the original wrong, this appellant has not the legal capacity to sue. To maintain this position would be to place, as Judge Hand said,

> "a premium upon lawless seizures by the sovereign, the fountain of justice,"

and to inject into this inquiry a wholly new element, namely, the nationality of the claimant. Once, again, it will not be forgotten that there is no finding that the claimant is, or was, an enemy and the Alien Property Custodian is estopped from raising that question now as an after-thought and as a defense interposed in a case which would otherwise be without defense.

Indeed, the court of its own motion may examine the question and, the illegality of the seizure becoming apparent, order the property restored to the original owner. Such was the course followed by Story, J., in *Brown v. United States,* 8 Cranch, 110.

That the seizure was unlawful and voidable, if not void, seems clear. In the case of *Brown v. United States, supra,* the rules governing the seizure and confiscation of enemy property on land were stated. It was said that there is no international usage which acts on the property itself; there is no general policy

to be followed; there is nothing to guide the executive, except the *legislation* which may be in existence, in determining in what way and to what extent property of aliens may be seized and held. In the absence of legislation, there can be no seizure and holding and the property must be returned. When there is legislation, it must be examined to see if it includes the property in question, and if it does not, it cannot be so included.

The relevant provision of "Trading with the Enemy" reads:

> "(c) If the President shall so require, any money or other property, including * * * choses in action and rights and claims of every character and description, owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted by the President hereunder, which the President after investigating shall determine is so owing or so belongs or is so held shall be conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian."

It will certainly not be contended that this provision of the Act was complied with or that the person who was known to be the owner of this stock, to wit, appellant, was found or determined to be an enemy.

CONCLUSION.

It is therefore submitted that, as the appellant corporation was not an "enemy" or "ally of enemy" as those words are defined in the Trading with the Enemy Act, it was clearly entitled, under subsection a of Section 9 of the Act, to sue and recover the property belonging to it, seized and held by the Alien Property Custodian, under the mistaken belief that it was the property of others who alone were declared enemies.

Respectfully submitted,

WADE H. ELLIS,

HENRY ESCHER,
CHALLEN B. ELLIS,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 412.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., *Appellant*,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES OF AMERICA, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES OF AMERICA, *Appellees*.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

REPLY BRIEF FOR APPELLANT.

WADE H. ELLIS,
Counsel for Appellant.

HENRY ESCHER,
CHALLEN B. ELLIS,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

REPLY BRIEF FOR APPELLANT.

There is presented here a simple question of construction of two provisions of an Act of Congress relating to the return of property taken and held by the Alien Property Custodian during the war. These two provisions are Section 9 (a) and Section 9 (b) of the Trading with the Enemy Act.

Section 9 (a) provides for the return of any property taken and held by the Alien Property Custodian

but which actually belonged to any person, including a corporation, *not an enemy*. The reason and purpose of it are obvious.

The Trading with the Enemy Act was concerned with the taking over of *enemy property* in America. It did not contemplate the seizure and retention of *non-enemy property*. Consequently, it carefully provided, in original Section 9, and the later Section 9 (a) containing the same terms, for the *return of all non-enemy property* which may have been mistakenly seized. It particularly defined the word "enemy" as used in the act, and also the words "ally of enemy." "Ally of enemy" merely referred to one who bore the same relation to the states allied with Germany (such as Bulgaria and Turkey) as "enemies" bore to Germany and Austria-Hungary, and the term need not be further noticed. "Enemies" included, not only nationals of enemy countries, but those who were nationals of neutral countries but did business in enemy territory. The word "enemy" was defined both as to individuals and as to corporations, and an enemy corporation was one that was incorporated in enemy territory, or, if incorporated elsewhere, did business in enemy territory. The one prerequisite to a return of property under 9 (a) (and original Section 9) was and is a showing that the claimant *was not such an "enemy" as was defined in the Act.*

The appellant corporation (plaintiff below) was, at the time its claim was filed, and is now, strictly within the terms of the original Section 9, and the present Section 9 (a), for it was and is a corporation of Switzerland and did not do business within enemy territory or the territory of allies of enemies. It made

its claim and filed its bill under the provisions of Section 9 and Section 9 (a).

Section 9 (b) on the other hand (passed long after the cessation of hostilities) is not concerned with the non-enemy character of the claimant, and does not require, as a prerequisite to the return of property, a showing that the claimant is not an "enemy or ally of enemy." It simply selects certain classes of owners of alien property, each class separately numbered, and particularly described (originally 8 classes in the Act of 1920, and 11 classes in the Act of 1923) and authorizes and permits the President to return any property that may have been taken from one coming within any one of those classes, and without any claim of "non-enemy" status. Among the classes so described, are women who had married Germans, certain consular officers, and also certain corporations (even corporations of Germany and corporations which had been doing business in enemy territory) whose stockholdings or control were of a certain prescribed character.

The two sub-sections (a) and (b), can easily stand together, and both can be enforced, as even a casual reading of their provisions will demonstrate. Each has definite provisions which can be applied without encroaching on the other. There is no conflict between them, and full effect can be given to all the words of each, without doing violence to the language or spirit of either.

Sub-section (a), as originally enacted (Section 9 of the Act of 1917), was a plain unambiguous provision and its meaning was undoubted. It is continued in force in exactly the same terms in the present law.

Sub-section (b) does not purport to take away any

rights carefully given to non-enemy owners of alien property in the original Trading with the Enemy Act. It contains no words of negation applicable to original Section 9. In this regard its language is clear and the construction obvious. If there were any doubt it would be removed by observing the deliberate re-enactment by Congress of the provisions of original Section 9 in the same law and at the same time, exactly as those provisions stood before.

On the other hand, if there is any room for construction by consideration of matters outside the law itself, then it must be observed that all the aids to interpretation—the committee reports, the hearings, the recommendations of the Attorney General and the communications of the Secretary of State, at whose instance the sub-section (b) was enacted—all point in one direction. They all show unequivocally and indisputably, that the purpose and intent were *to continue* by re-enactment in the amended Act, *all the rights of non-enemy claimants* given by original Act "identical with the provisions of Section 9 of the Trading with the Enemy Act" and containing "the same provisions for relief of any person not an enemy or ally of enemy, as those terms are used in that Act" *and to enlarge* (in the new sub-section (b)) the list of those who would be permitted to receive back their property, *by adding* to those already provided for as non-enemies, certain other claimants who did not need to show non-enemy character.

Nor is any different purpose or intent of sub-sections (a) and (b) to be spelled out of other provisions of the Act. Sub-section (d) contains a provision giving personal representatives of deceased claimants

certain rights; sub-section (e) contains a restriction (expressed in plain and emphatic language) on all claimants, whether enemy or non-enemy. But the fact that (e) may restrict claimants under (a), as well as claimants under (b), does not show that (a) repeals or limits (b) or that (b) repeals or limits (a). Nor does the enlargement of rights in (d) show that (a) enlarges (b), or (b) enlarges (a). This seems too clear for argument.

Sub-section (a) can be enforced in exact accordance with its terms, without lessening or changing one particle, the enforcement of sub-section (b); so sub-section (b) can be enforced without lessening the enforcement of sub-section (a). The one, therefore, does not mean to repeal or limit the other.

And yet the case of the appellees rests on the proposition that the rights given to claimants by the original Section (9) of the Act (continued in 9-a) can no longer be asserted after the enactment of sub-section (b). And, particularly as applied to the instant case, that a non-enemy corporation, which cannot comply with the provisions of sub-section (b) can no longer avail itself of the provisions of sub-section (a).

The gist of this argument is found in Brief for Appellees (in No. 343, at page 6, and in No. 412 at page 5). To understand this argument it should be explained that sub-section (a) and sub-section (b), as well as other sections of the Act, deal with all the property in the hands of the Alien Property Custodian, however secured, whether by voluntary transfer, or by seizure. Sub-section (a) speaks of *any* person claiming "*any* property" "conveyed, transferred or seized * * * by the Alien Property Custodian." Sub-section (b) uses

the expression "in respect of all property conveyed, transferred or seized, etc.," and says that the President may return it to certain specified and selected claimants. Of course, neither sub-section meant completely to dispose of all the property in the hands of the Alien Property Custodian, but did mean that, *out of all the property, or in respect of all the property,* certain parts must be or might be returned. But counsel for appellees in the brief (in No. 412 at p. 5, and in No. 343, at p. 6) seizes upon the word "all" in sub-section (b) and deduces from it the conclusion that Congress meant sub-section (b) to remain the only provision for the return of any property, and that no right was any longer given by (a) because (b) covered "all" the property. At p. 6 of Brief for Appellees in No. 343, it is said:

> "Moreover, and here we think is the insurmountable difficulty in the path of appellant, the application of sub-section (b) is not, as appellant urges, only to such property of *enemies or allies of enemies* as has been seized but *'in respect of ALL money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder.'* "

The trouble with this argument, aside from attributing a wholly unintended meaning to an introductory phrase in a statute, is that it *proves too much!*

If sub-section (b) was meant to be the only provision disposing of any property, then original section 9 was nullified and no longer in force. And yet Congress very carefully and particularly re-enacted the original Section 9 as sub-section (a) in the same broad and inclusive language, and made it the very first part

of the new Act. The appellees' contention makes sub-section (a) mean nothing whatever.

Again, if sub-section (b) is the entire provision for the return of any property, then other provisions such as sub-sections (d) and (e) are inoperative. Further if the particular mention of any class in sub-section (b) excludes all others of that class, then a woman who was non-enemy within sub-section (a) could no longer claim, unless she could show she had been married to a German prior to April 6, 1917, which is absurd!

But the answer to the argument of counsel for appellees is not hard to find in sound principles of interpretation of statutes. It is, indeed, suggested by the very rules of construction which counsel invokes and by the very cases cited in support of them.

At page 8 (in Brief in No. 412), counsel says of section 9: "It must be construed as a whole. * * * All parts of the section must be construed together." He neglects to add, however, another part of the rule, equally important—and "*every clause in a statute should have effect and one portion should not be placed in antagonism to another.*" It is this rule of construction which the contention of counsel for appellees so clearly contravenes. No better demonstration of this can be found than is contained in the first case cited by counsel for appellees, *which emphatically repudiates the precise reasoning* which counsel for appellees now employs. That is the case of *United States v. Landram*, 118 U. S. 81.

In that case the Court had before it (as here) two separate provisions of an Act of Congress and counsel for the Government contended that one provision virtually repealed by implication another provision which

had been in an earlier law but had been re-enacted. The two provisions were section 2 and section 5 of the Act of March 1, 1879, amending the laws relating to internal revenue and providing for the compensation of collectors. Sec. 2 provided for allowances for salary and office expenses of collectors "all of which shall be in lieu of salary and commissions heretofore allowed by law," and stipulated that the salaries should be fixed at certain set sums, according to amount of collections, but not exceeding $4,500 as total net compensation.

Section 3314 R. S., previously in force, had provided for commissions to collectors of one-half of 1 per cent on the amount collected, not, however, to increase the total net compensation allowed by law. This provision was re-enacted and became Section 5 of the same Act of March 1, 1879.

Under Section 3314 collectors were allowed their commissions. After the Act of 1879 was passed the commissions were cut off and counsel for the Government contended in this court that collectors were governed by Sec. 2, and could receive salary only and not commissions. Of this contention and the argument of counsel thereon, this Court said:

> "On the passage of the Act of March 1, 1879, the right of the collectors to commissions was for the first time disputed. It seems to us clear that this right was not taken away by that Act. When it was passed section 3314 of the Revised Statutes allowing the commisions was in force. It was a plain, unambiguous provision, whose meaning had not been doubted and which was not open to construction. Being in force, there was *no reason for its re-enactment* by the Act of March 1, 1879, *except to express in a most unmistakable manner*

the purpose of Congress that it should continue in force, and should not be considered as in any way modified by that Act."

"The only ground upon which the appellants try to escape this conclusion is by an argument which amounts to this: that Congress, by section 2 of the Act of March 1, 1879, intended virtually to repeal by implication that part of section 3314 of the Revised Statutes relating to collector's commissions, which, by Section 5 of the same Act, it deliberately, and word for word, re-enacted."

The Court then called attention to the fact that Section 3314 R. S., and Sec. 2 of the Act of 1879 had again been re-enacted in a subsequent Act of 1880. And the Court added:

"But it is not necessary to resort to the Act of May 28, 1880, to sustain the right of the appellee to any part of his commissions. It is a settled rule of construction that 'One part of a statute must be so construed by another that the whole may, if possible, stand: *Ut res magis valeat quam pereat'* (1 Bl. Com. 89); or, as otherwise expressed, that every clause in a statute should have effect, and one portion should not be placed in antagonism to another. *Brooks v. Mobile School Commissioners,* 31 Ala. 227."

After applying the rules of interpretation to Sections 2 and 5, the Court concluded:

"Thus construed, both sections of the statute are given effect without violence to the language or spirit of either. *No construction of the two sections would be so incongruous and unreasonable as to hold that Congress deliberately re-enacted the provision of Section 3314 allowing commissions to the collectors without meaning*

> *anything by it;* for the case of the appellants can not be sustained unless we virtually expunge from the statute book, after it had, *ex industria*, been put there by Congress, the provision allowing to the collectors commissions on taxes collected by the sale of taxpaid spirit stamps."

Here, in the instant case (as in the case of the *United States v. Landram*) we have the controlling feature that Congress, in one clause of the law, re-enacted in identical terms the exact provision under which the rights in question are claimed, and made it a part of the same Act which counsel for the Government contends denies those rights in another clause. That is the insurmountable difficulty in the argument for appellees.

Respectfully submitted,

WADE H. ELLIS,
Counsel for Appellant.

HENRY ESCHER,
CHALLEN B. ELLIS,
Of Counsel.

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19120—21†—1

In the Supreme Court of the United States

OCTOBER TERM, 1924

COMPAGNIE INTERNATIONALE DE PRODUITS Alimentaires S. A., appellant

v.

THOMAS W. MILLER, AS ALIEN PROPERTY Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, appellees

No. 412

BRIEF FOR APPELLEES

Statement of the Case

At the time of the seizure by the Alien Property Custodian of the property herein involved the appellant was a corporation of Switzerland, all of whose capital stock except 17.15% thereof belonged to subjects of and residents in countries with which the United States was at war, 55.19% of such capital stock belonging to four persons, to wit, Carl, Richard, Robert, and Walter Franck, subjects of and residents in either Germany or Austria. The property seized consisted principally of 6,250 shares of stock in a

New York corporation, which previously had been transferred to the appellant. It was seized under a demand of the Alien Property Custodian dated July 17, 1918 (R. 9), wherein he determined that Carl, Richard, Robert, and Walter Franck were enemies and that they had "a certain right, title, and interest" in these shares of stock. This action is to recover the property thus seized.

The court has ordered this case submitted with No. 343, *Behn, Meyer & Company, Limited, Appellant*, v. *Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States*. Inasmuch as the questions involved in this case and in No. 343 are essentially the same, reference is made to our brief in that case, the argument being summarized herein and not repeated in full.

In both cases the question to be determined is whether appellant has a right in equity under the Trading with the Enemy Act, as amended June 5, 1920, and as again amended March 4, 1923, to the return of property seized as enemy-owned property, in view of the fact that the Act as amended, "in respect of *all* money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States" permits return only to such corporations as have less than half of their stock enemy owned. And that question in turn depends upon whether the language of the amendment purporting to apply to "*all* money or other property conveyed, trans-

ferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him" shall be construed to apply to only a *part* of the property so coming into his possession.

Section 9 of the Trading with the Enemy Act with the amendments referred to is set out for convenience of reference in Appendix A, hereto appended. Section 2 of the Act, defining who are enemies, is set out in Appendix B.

ARGUMENT

I

The amendments to the Trading with the Enemy Act forbid the return of the property involved here

The amendment of June 15, 1920, added to the Trading with the Enemy Act (among other provisions) subdivision (b) of Section 9, as follows:

> (b) In respect of all money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—
>
> * * * * *
>
> (6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated

> within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

Paragraph (6) of subdivision (b) was one of eight paragraphs. The amendment of March 5, 1923, added three others, of which the last was:

> (11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided*, however, That this subsection shall not affect any rights which any citizen or subject may have under paragraphs (1) of this subsection.

The effect of paragraphs (6) and (11) was to restrict the return of seized property to such corporations as were therein described, at least as to all seized property within the purview of the amendments. It may

fairly be said, we think, that so much is conceded by appellant.

Now we submit that the seized property contemplated by the amendments was *all* property whatsoever which the Alien Property Custodian had taken over as enemy property. Our reasons therefor are these:

First. Such is the express declaration of the first words of the language added by the amendments, an express declaration that removes any ambiguity that might otherwise be said to exist. The amendment is to apply "in respect of *all* money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him." This language is entirely inconsistent with the contention made throughout the brief of appellant that the amendments were intended to have application only to a part and not to "*all*" property that had been seized. The contention that such property as was refered to in subdivision (a) was intended to be excepted from subdivision (b) disregards the language quoted and that language is nowhere discussed in appellant's brief. It follows immediately subdivision (a) on which appellant relies. It is inconceivable that the word "*all*" would have been used if it was the intention of Congesss to except a part of the property seized so large and important as to call for a whole subdivision of Section 9—originally all of Section 9.

Second. If Congress intended that paragraphs (6) and (11) should refer only to such corporations of

neutral countries as, for example, had done business in enemy countries and were therefore within the letter of the definition of enemy corporations in Section 2, words expressing such a limitation naturally would have been used. None were used. On the contrary, the words which were used describe *all* corporations of neutral countries, any of whose stock (under paragraph 6) or a majority of whose stock (under paragraph 11) was owned by citizens or subjects of enemy countries. There is no restriction here to certain of such corporations. Appellant interpolates the restriction by main force.

Third. Paragraphs (6) and (11) conclusively demonstrate that Congress intended to look within the corporation camouflage to ascertain whether the individuals who owned the stock, and thereby in a real if not a technical sense the property, were enemies and, if they were enemies, to hold the property. It was the property of the nationals of Germany and Austria that was aimed at, as distinguished from merely "technical" enemies. To reach that property Congress in effect in these paragraphs said the fiction of corporate ownership and that the stockholders have no ownership will be disregarded. Obviously, such a purpose strikes at every corporation whose stock or a majority thereof was enemy owned. There was therefore no exception and should have been none in favor of a corporation which was no less a covering for enemies because it may not have done business in enemy countries.

Fourth. The intent of Congress in these amendments that they shall apply to *all* property seized as enemy property although the beneficial interest in enemies was through ownership by corporations of neutral countries in which the enemies were stockholders is corroborated by the terms of Section 5 of the act ending the war (Federal Statutes Annotated, page 68), which provides that the property of all German nationals (and others) which had come into the possession of the United States "*from any source whatsoever*" should be retained until the enemy countries should make certain restitutions to American citizens. (Sec. 5 if set out at page 16 of our brief in the *Behn, Meyer & Co. case*, No. 343.)

II

Section 9 (a), construed in the light of the amendments, does not warrant the return of appellant's property

The appellant seeks to avoid the all-inclusive phraseology of the amendments to the Trading with the Enemy Act by arguing that subdivision (a) of Section 9 should be considered entirely separately from the subdivisions of that Section added by the amendments, as if it were a wholly independent enactment, not to be read together with and as modified by subdivision (b) and other subdivisions added at the same time. Then, having so abstracted from the whole section that part which appellant thinks gives some support to its case, it further argues

that subdivision (a) requires the return of property to any person "not an enemy" and that appellant was "not an enemy" when its property was seized. To this we answer:

First. Section 9, including its several subdivisions, was enacted as a whole at the time of each amendment. It must be construed as a whole. Subdivision (a) can not be read alone without regard to limitations implied in the following subdivisions. All parts of the section must be construed together. (*United States* v. *Landram*, 118 U. S. 81, 85; *A. Bryant Co.* v. *N. Y. Steam Fitting Co.*, 235 U. S. 327, 337; *Market Co.* v. *Hoffman*, 101 U. S. 112, 116; *Peck et al.* v. *Jenness*, 48 U. S. (7 How.) 612, 622.) When construed together it is clear that even if it should be conceded (and it is not conceded) that subdivision (a) standing alone might warrant the return of property belonging to a corporation of a neutral country which had not done business in an enemy country so as to bring it strictly within the class of corporations specifically mentioned in Section 2 of the act, nevertheless such property is not to be returned if, although technically the property of a neutral corporation, in reality it is the property of enemies constituting a majority of the stockholders of such corporation.

Second. The contention made by appellant that it was not the intention of Congress that the amendments should effect any rights that might have existed prior to the amendments not only defies the plain language of subsection (b) but also that of subsection

(e), added at the same time as (b) and providing that:

> No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, *and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.* [Italics ours.]

If the appellant's contention is sound to the effect that subsection (a) of Section 9 must be taken without regard to the rest of the section, then section (e) becomes of no effect whatsoever. Prior to the amendment of June 5, 1920, any individual, not an enemy, could sue to secure the return of his property. This applied to citizens of every nationality, so that a Frenchman or a citizen of Great Britain, provided he did not reside in enemy territory, could, if his property had been wrongfully seized, sue under Section 9 without any restriction, and secure the return thereof. However, subsection (e) provides that no money or other property shall be returned, nor any debt allowed under the section to any person who is a citizen or subject of any nation with which the

United States was associated in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States. Here is a very evident restriction upon the formal provisions of Section 9, but if appellant's contention is true, a Britisher, if he is not an enemy, may sue under subsection (a) without any regard to subsection (e), and even though Great Britain does not accord reciprocal rights to American citizens, may secure the return of property or the payment of debts out of enemy property.

Furthermore, subsection (e) provides that no debt can be allowed under Section 9 unless it was owing to and owned by the claimant prior to October 6, 1917. Here is another limitation placed upon at least the apparent provisions of Section 9. Furthermore, subsection (e) provides that as to claimants other than citizens of the United States, no debt can be allowed out of property in the hands of the Custodian, unless it arose with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States. Prior to the amendment of June 5, 1920, a German citizen residing in the United States who had not been interned could sue under Section 9 and secure the payment of a debt owing to him from an enemy whose property had been seized.

Since this amendment, however, such a German can not sue and secure the payment of debts unless the debt arose with reference to the property in the hands of the Custodian. The same thing is true

with respect to citizens of France, England, or any other country, other than the United States. Their debt must arise with reference to the property before they can sue. This was not true, however, before the amendment of June 5, 1920. Prior to that date a citizen of Great Britain could secure the payment of his debt against an enemy out of enemy property in the hands of the Custodian, even though it did not arise with reference to the property in the hands of the Custodian. This provision has been sustained by the Courts. *Kogler* v. *Alien Property Custodian*, 288 Fed. 806.

It is apparent then that the amendment of June 5, 1920, did restrict the original Section 9. It must, therefore, follow that the contention of the appellant is unsound, for to follow that contention would entirely eliminate subsection (e) of the Act. Section 9 as amended June 5, 1920, is an entire statute and each part must be construed with respect to every other party. It is true that there are certain features of the amendment which give persons heretofore enemies the right to recover under the Act. It was necessary to make a provision with respect to corporations whose stock was owned by enemies, in view of the confusion that had arisen.

Third. While it must be and is conceded that appellant was not such a corporation as Section 2 specifically described as an enemy, that section also declares that individuals or bodies of individuals, resident subjects of enemy countries, are enemies under the act. If there were no specific reference to

corporations, a liberal interpretation of the reference to individuals and bodies of individuals would certainly justify seizure of property of such individuals or bodies of individuals although clothed in the garb of a neutral corporation. And certainly a liberal interpretation will be given in favor of upholding the war powers of the Executive as against the alleged rights of enemies based on technical distinctions. Now, does the specific reference to corporations in Section 2 preclude such an interpretation? Only if certain minor rules of statutory construction are allowed to overcome an intent clearly to be gathered from the whole of Section 2 and the whole of the Trading with the Enemy Act, an intent that every possible enemy, even those who only in the most technical sense could be denominated enemies, was to be included. To make the intent still more clear, Section 2 authorizes the President to include by proclamation anyone whatsoever within the term "enemy."

Fourth. If, absent the amendments of 1920 and 1923, it could be argued that the act did not authorize the seizure as enemy property of the property owned by enemies through corporations of neutral countries, those amendments make the intention of Congress clear that the corporation covering is to be pierced and regard given to the character of the individuals (whether enemies or otherwise) composing the corporation's stockholders. We submit that the amendments constitute a legislative construction, if one is needed, of the definition of

enemies in Section 2, an explanation thereof, or even (although we think it is not necessary to so contend) an expansion of the term "enemy" within the meaning of the act.

Fifth. The English cases (*Daimler Co.* v. *Continental Tire and Rubber Co.*, 32 T. L. R. 624; *Steamship St. Tudno*, 5 Lloyd's Rep. of Prize Cas. 198; *The Michigan*, 5 Lloyd's Rep. of Prize Cas. 42), more fully discussed in our brief in the companion case, hold that without express statutory authority the government conducting a war could seize as enemy property property which technically was owned by corporations of countries other than enemy countries, but whose stockholders were enemies. The general powers of government arising from law embraced this power. We submit the same was true as to the power of the United States and that the definitions in Section 2 must be liberally construed in favor of upholding powers existing under the common law. True, under the early case of *Brown* v. *United States*, 8 Cranch 110, the United States, without special legislative authorization, can not seize *and confiscate* property of an enemy, but we have seen no case and believe there is none which holds that where an act of Congress authorizes the seizure of enemy property, the power to *seize only*, existing, as we think, independently of legislative authorization, may be so restricted as to prevent the seizure of the property of those who are unquestionably enemies, in whatever manner such property is held by them.

If what we have herein urged is correct, then it follows that appellant's theories that subdivision (a) of Section 9 is not restricted by the amendments and that appellant was not properly regarded as an enemy is unsound. Without those theories, however, of course, appellant has no case.

CONCLUSION

As in the companion case, and for the same reasons, which reasons we have summarized herein, the appellant is not entitled under the law to recover the property seized by the Alien Property Custodian as enemy property. The decision of the court below should be affirmed.

JAMES M. BECK,
Solicitor General.

MERRILL E. OTIS,
Special Assistant to the Attorney General.

NOVEMBER, 1924.

Appendix A

Section 9 of the Trading with the Enemy Act, including the amendment of June 5, 1920, and including also the amendment of March 4, 1923. The amendment of March 4, 1923, added clauses (9), (10), and (11). The amendment of June 5, 1920, added all of subdivision (b) except clauses (9), (10), and (11).

Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order

within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary

or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the

War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or

the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however*, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection—

* * * * *

APPENDIX B

Section 2 of the original Trading with the Enemy Act, defining who are "enemies" under the act:

SEC. 2. That the word "*enemy*," as used herein, *shall be deemed to mean*, for the purposes of such trading and of this Act—

(*a*) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and *any corporation incorporated* within such territory of any nation with which the United States is at war or incorporated *within any country other than the United States and doing business within such territory*.

(*b*) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(*c*) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

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SUPREME COURT OF THE UNITED STATES.

No. 412.—October Term, 1924.

Compagnie Internationale de Produits Alimentaires S. A., Appellant, *vs.* Thomas W. Miller, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America.	Appeal from the Court of Appeals of the District of Columbia.

[January 5, 1925.]

Mr. Justice McReynolds delivered the opinion of the Court.

The court below decided this cause upon authority of its opinion in *Behn, Meyer & Company, Limited* v. *Thomas W. Miller, et al.*, 296 Fed. 1002, which upon appeal became No. 343 on our docket. The decree therein has been reversed for reasons stated in the opinion just announced. The two causes present the same issues. Consequently the challenged decree herein also must be reversed and the cause remanded for further proceedings in conformity with our conclusions.

A true copy.

Test:

Clerk, Supreme Court, U. S.